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ABSTRACT

The central theme of the papers presented in this symposium is that the labor market for minorities and youth does not appear to function properly because of structural impediments (often caused by government regulations meant to help minorities) and that these impediments must be identified and effective remedies proposed. Following an introduction by James T. Bennett, Ann Wortham's paper considers the role of discrimination and the conflicts created when discrimination is addressed by legislative fiat; a comment by Paul H. Rubin follows. Then, William A. Keyes focuses on the minimum wage and on the Davis-Bacon Act and how its provisions limit employment opportunities; the Keyes paper is followed by comments from Walter E. Williams and James E. Pearce. Wendell Wilkie Gunn surveys a variety of techniques used by government to regulate public sector employment which have a particularly onerous effect on minority employment; this paper is commented upon by James R. Barth and Thomas J. DiLorenzo. Finally, Clarence Thomas discusses the role of human capital generated in the educational process as an important determinant of employment opportunities; John Raisian and Dan C. Heldman comment on the final paper. (CMG)

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SYMPOSIUM*

LABOR POLICY, MINORITIES AND YOUTH

Introduction and Overview

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The employment problems of minorities in general and minority youth in particular are well-known and have been widely documented and analyzed in a vast (and growing) body of literature that spans a range of disciplines in the social sciences. The unemployment rates of these groups may be described as acute in that they are very high — having reached or even exceeded 50 percent in some labor markets in the trough of the business cycle — and as chronic in the sense that, despite economic growth and expansion, they have remained for decades at levels widely regarded as unacceptable. The employment problems of minorities and youth seem impervious to a host of public policy programs that have been implemented with the expressed intent of aiding those workers on the lowest rung of the economic ladder or those who have not yet reached the first rung. For nearly half a century, governments at all levels — federal, state, and local — have enacted legislation to protect workers and to provide economic opportunities for those in need of jobs. Somerset Maugham's statement in his Depression-era classic *Of Human Bondage* that "[T]here is nothing so degrading as the constant anxiety about one's means of livelihood . . ." has been taken to heart by politicians who have constantly sought legislative cures for the canker of unemployment.

Any realistic assessment of the numerous and varied public employment initiatives designed to provide jobs for those who are unemployed must reach the conclusion that the efficacy of these programs has, at best, been questionable. At the very least, given the tens of billions of dollars expended, it is very doubtful that the U.S. taxpayer has received anything like a reasonable rate of return on a massive investment. Public policy, apparently, has provided no panacea for the employment problems of minorities and youth, and the data seem to indicate that the situation is getting worse rather than better. Given such premises, a strong case can be made in support of the need for a closer examination of some of the more important issues in order to determine whether alternative approaches may

not yield better results; at this juncture, it seems that "more of the same" is an inadequate prescription for these employment problems. Stated another way, the labor market for minorities does not appear to function properly in providing enough jobs for those seeking work; evidently, there are structural impediments in this marketplace. It is important to identify these impediments and propose effective remedies. This is the central theme of the four papers presented in this research symposium.

Anne Wortham's work considers the role of discrimination and the conflicts created when discrimination is addressed by legislative fiat; William Keyes focuses on the Davis-Bacon Act and the way in which its provisions limit employment opportunities; Wendell Gunn surveys a variety of techniques used by government to regulate the market for labor which have a particularly onerous effect on minority employment; finally, Clarence Thomas discusses the role of human capital generated in the education process as an important determinant of employment opportunity. Although the scope of topics considered is by no means exhaustive, the findings presented are suggestive of a central problem: Regardless of the stated intent of government regulation of the market for labor in terms of helping minority workers, much of the regulation exacerbates rather than eases the problems of those most in need while various special interest groups benefit. Certainly, no claim is made that this research symposium provides all the answers for the questions raised (or, indeed, that all the relevant questions related to this complex issue have been asked). However, it is clear that many important and insightful points have been made in the four papers and the associated comments and that these points deserve careful consideration and additional research.

*This research symposium was cosponsored by the Lincoln Institute for Research and Education and the *Journal of Labor Research* and held on April 6, 1982, in Washington, D.C., at the Mayflower Hotel.

Property Rights, Human Rights, and Minorities*

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I. *Introduction*

Any American who can cite the Preamble of the Declaration of Independence knows what the historic ideals of American society are. But there is hardly any agreement on how those ideals should be implemented in the realm of race relations. The question of what can be done to cope with the problems of prejudice and discrimination in America has been argued since the beginning days of the republic. Thomas Jefferson died without having reached an answer in his own mind. Sometimes the social and political solutions put forth have been consistent with American ideals, but more often they have been advanced and implemented in betrayal of those ideals. The disagreement has been over means and ends and is generally argued from two perspectives represented by Supreme Court decisions separated by eighty-one years of change in the American government's approach to civil rights. In 1875 Congress passed a Civil Rights Act that forbade operators of hotels, theaters, and transportation facilities to discriminate against Negroes in the rendering of service. But in 1883 the Supreme Court declared this "places of public accommodation" law unconstitutional on the ground that it was a police power measure regulating private conduct and as such beyond the scope of the powers granted Congress in the Constitution. In 1964 the Supreme Court upheld the constitutionality of the public accommodations section of the 1964 Civil Rights Act. The Court unanimously ruled that the Constitution's commerce clause, which gave Congress the power to regulate interstate commerce, gave Congress broad enough authority to ban racial discrimination that might affect interstate commerce.

The differing interpretations of the Constitution by the Supreme Courts of 1883 and 1964 reflect not only the extent to which the American government is willing to go to eliminate racism, but it also shows the degree to which the concept of human rights has been redefined during the twentieth century. The 1883 Supreme Court ruling against the unconstitutionality of the 1875 Civil Rights Act was consistent with the definition of human rights as natural, absolute, and

*Adapted and reprinted from Chapter XII, "Antiracism Versus Human Rights," of *The Other Side of Racism: A Philosophical Study of Black Race Consciousness*, by Anne Wortham. Copyright ©1981 by the Ohio State University Press. All rights reserved. Used by permission of the publisher.

objective, the exercise of which should be protected from the interference of others. It also sanctioned private conduct as a realm that must not be interfered with by the government. But the 1964 Supreme Court decision expresses the theory of human rights as arbitrary, absent of any universal standard of right and wrong, and defined according to what the law prefers at any given time. "The original notion of the natural right to freedom," writes Tibor Machan, "was that people in a human community are free to do wrong within their own spheres, *with what is their own* — print wrong ideas, buy dirty literature, and even select to trade only with those who belong to one (favored) race. That is the liberty which human rights guarantee, even in the face of public condemnation. [Now, according to] U.S. Law, one has no rights to do what the 'public' considers wrong. (That is, what those in power identify as wrong, sometimes with and other times without public or the majority's explicit or tacit support.)"[1]

It is their concept of human rights that has determined the direction Americans and their government have taken in deciding how to solve the problem of racism. The question before them always is whether the humanness of racism is to be dealt with according to the standards of human rights, or whether it is to be eliminated by whatever legislative and judicial decree those in power happen to think best at a given time. Two speeches by Lyndon B. Johnson, separated by sixteen years of change (in the man and in the nation), further illustrate the division among Americans in answering this question. While running for the Senate in 1948, Johnson denounced the civil rights portions of Harry Truman's Fair Deal Policy as

> a farce and a sham — an effort to set up a police state in the guise of liberty. I am opposed to that program. I have fought it in Congress. . . . I am against the FEPC [Federal Employment Practices Commission] because if a man can tell you whom you must hire, he can tell you whom you cannot employ. I have met this head-on.[2]

But in 1964, sixteen years later, Johnson was president, representing a broader constituency than the state of Texas he sought to represent in 1948, and as president he signed the Civil Rights Act, saying:

> We must not approach the observance and enforcement of this law in a vengeful spirit. Its purpose is not to punish. Its purpose is not to divide, but to end divisions — divisions which have lasted too long. . . . [The act] relies first on voluntary compliance, then on the efforts of states and local communities to secure the rights of citizens. It provides for the national authority to step in only when others cannot or will not do the job. . . . We have come to a time of testing. We must not fail. Let us close the springs of racial poison.[3]

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[1] Machan, *Human Rights and Human Liberties*, p. 43.

[2] Gettleman and the Mermelstein, eds., *The Great Society Reader*.

[3] *Facts On File*, July 2-July 8, 1964, p. 220.

So it was that Johnson, like so many Americans, had come to believe that closing "the springs of racial poison" justified the restriction of human rights as called for in the Civil Rights Act, yet all the while referring to the act, in the words of Whitney M. Young, Jr., as "the greatest single triumph for human rights in our country since the Emancipation Proclamation."

There were those who were not so enthusiastic, however. "You can't legislate goodwill, and therefore the only thing that will eliminate discrimination and segregation is education, not legislation," said Black Muslim leader Malcolm X.

Governor George C. Wallace of Alabama warned, "It will take a police state to enforce it."

In his announcement on June 18, 1964, that he would vote against the bill, Senator Barry Goldwater had said that while he was opposed to all discrimination, he believed it to be a problem that "is fundamentally one of the heart." Some law can help, he said, "but no law . . . [with] provisions which fly in the face of the Constitution and which require for their effective execution the creation of a police state." Goldwater, who was campaigning for the presidency at the time, was denounced by many as a racist demagogue, and Governor Nelson Rockefeller said Goldwater had "effectively abandoned the Republican party on the most fundamental issue of our time."

It is now eighteen years since the 1964 Civil Rights Act and while a great deal of discimination and segregation has been eliminated, Americans are still divided on the morality of using legislation to eliminate private racism. One position, the laissez-faire approach, taken partially in Johnson's 1948 speech, is that the problems of race relations are best left to private, voluntary action for solution; that (antiracism) legislation cannot be enforced in the private sector without violating the rights of individuals; that such laws are unenforceable because they represent an attempt to overcome prejudice and discrimination by law, a venture that is doomed to failure; that they only stir up new antagonisms, thereby interfering with private, voluntary efforts to improve race relations.

The second position, the statist approach, taken in Johnson's 1964 speech, favors antiracism legislation on the basis that racial discrimination, in private as well as public affairs, is antisocial and un-American and that it is proper for the state to outlaw it; that no right is ever absolute; that all rights are subject to restriction where the greater social good overrides the individual interest; that while outlawing racial discrimination does not produce an overnight utopia, the presence of such laws on the statute books, coupled with an enforcement program, speeds up the absorption of minority groups into the mainstream of American life; that the choice of methods to eliminate racial discrimination is not an "either/or" one between compulsory regulation under statutes and voluntary action through education and similar methods, but that law and education both have roles to play in safeguarding the civil rights of minorities.

"It is evil that the nonviolent resister seeks to defeat, not the persons victimized by evil," wrote Martin Luther King, Jr. "If he is opposing racial injustice, the nonviolent resister has the vision to see that the basic tension is not between races. . . . The problem is not a purely racial one, with Negroes set against whites. In the end, [the struggle for equality] is not a struggle between people at all, but a tension between justice and injustice. Nonviolent resistance is not aimed against oppressor but against oppression. Under its banner consciences, not racial groups, are enlisted."[4]

By so divorcing men from their actions, civil rights activists advocated an integrated society without reference to the individuals living in the society. Their goal was not just to challenge unjust laws and statutes against the rights of Negroes, but also to "seek a social order of justice permeated by love" — to change the hearts and minds of white America and, as Miller put it, "rescue the wrongdoing oppressor from his misdeeds" by enlisting the law as a regulator of morality and conduct. But while legal action was taken to correct injustices incurred by the subjection of Negroes to the will of white racists, the enforcement of those laws had the effect of subjecting those whites to the will of Negroes. Thus, the rights of racists are now restricted in order to achieve the greater good of a nonracist society.

In choosing to eliminate racism without consideration for the human source of racism — i.e., individuals and their natural right to free thought — antiracism legislation has necessarily broken the historical pattern of the American sanction and protection of individual rights. Indeed, the implementation of such legislation by enforcement programs as affirmative action has resulted in the unprecedented politicization of ethnic and racial categories. American public policy has coped with the humanness of racism not by making it insignificant in social relations but by making it more important than ever before.[5] Glazer draws the picture of the assault by antiracism legislation on human rights thusly:

> Larger and larger areas of employment came under increasingly stringent controls so that each offer of a job, each promotion, each dismissal had to be considered in the light of its effects on group ratios in employment. Inevitably, this meant the ethnic group of each individual began to affect and, in many cases, dominate consideration of whether that individual would be hired, promoted, or dismissed. In the public school systems, questions of student and teacher assignment became increasingly dominated by considerations of each individual's ethnic group: Children and teachers of certain races and ethnic groups could be assigned to this school but not to that one. The courts and government agencies were called upon to act with ever greater vigor to assure that, in each housing development and in each community, certain proportions of residents by race would be achieved, and a new body of law and practice began to build up which would, in this field, too, require public action on the basis of an

[4]King, *Strike Toward Freedom*, pp. 82, 175.

[5]See Levy and Kramer, *The Ethnic Factor*.

individual's race and ethnic group. In each case, it was argued, positive public action on the basis of race and ethnicity was required to overcome a previous harmful public action on the basis of race and ethnicity.[6]

For the first time the federal government gives legal status to ethnic and racial categories and the wrong of racism is "corrected" by the wrong of still more racism. What has made it possible for antidiscrimination laws to become the tools by which reverse discrimination is implemented? What has enabled the quest for equal opportunity and equal justice to degenerate into legal sanction of preferential treatment? Very generally the cause lies in the changing American consensus, which subscribes to the priority of equality over freedom and individual rights, the redefinition of equality of opportunity to mean equality of condition or result, the practice of sacrificing principles to pragmatic expediency, and the reliance on government to force into existence solutions to social problems. Specifically, however, the instrument of such programs as busing, "open admissions" in colleges and universities, preferential hiring, and affirmative action marketing plans for even statistical distribution in housing is the 1964 Civil Rights Act.

Five of the act's eleven titles variously prohibit segregation or discrimination "on the ground of race, color, religion or national origin." The act could be read, writes Glazer, "as instituting into law Judge Harlan's famous dissent in *Plessey v. Ferguson*: 'Our Constitution is color-blind.' " In his analysis of the act's legislative history and passages from the act itself, Glazer demonstrates that the context of the law and the "clear and unambiguous intent" of Congress was "granting not *group* rights but *individual* rights." This was indeed the *stated* intent of the act, but, in giving government a role in banning private discrimination, it contradicts that intent and its provisions extend the administrative context to allow for subsequent affirmative action rulings and enforcement plans.[7]

It does not matter that during the debate on the bill several congressmen expressed abhorrence to the idea of quotas, preferential hiring, busing, and the like, and so specified this sentiment in the provisions of the act. What cancels out their lofty intentions and nullifies the language of the provisions is the breach of property rights in the public accommodations and employment titles. It is in the antidiscrimination clauses of these titles that the act grants administrative agen-

[6]Glazer, *Affirmative Discrimination*, pp. 31-32. It should be noted that Glazer does not question the morality of affirmative action, only its effectiveness, its necessity, and the justice of its implementation. His criticism of preferential hiring, for instance, is not on principle but because it generally does not do anything to benefit those who need it. He writes: "For me, no consideration of principle — such as that merit should be rewarded, or that governmental programs should not discriminate on grounds of race or ethnic group — would stand in the way of a program of preferential hiring if it made some substantial progress in reducing the severe problems of the low-income black population and of the inner cities."

[7]For my discussion of Titles 1 and 8 as the basis for extending the statistical-distribution approach to education and employment, see Anne Wortham, "An Open Letter to Nathan Glazer."

cies the power to discriminate in favor of some citizens at the expense of others, and thus does not grant *rights* but political *privileges* instead. It is here that it violates an individual's right to discriminate on the basis of race, color, or national origin. Granted, such nonviolent discrimination is immoral, but its immorality does not justify legislative prohibition of it, no more than does the desire to reduce discrimination justify the use of coercion to bring it about. Yet, the use of coercive legislation against persons engaging in private racial discrimination is just how the American people have chosen to cope with the humanness of racism.

II. *Rights of the Discriminator*

For ninety-five years, since the Declaration of Independence until the ratification of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution, the United States developed under the black cloud of being a nation in search of freedom for white men while denying it to Negroes. However, eliminating slavery did not eradicate the contradiction of racial oppression existing in the land of the free. For another eighty-four years until 1954 the contradiction persisted with legal discrimination and segregation succeeding slavery as the breach of the human rights of Negro Americans. Then within a year after the March on Washington in 1963, Congress passed more legislation to protect the rights of Negroes than it had during the whole period since 1875 when the first civil rights bill was passed. With the 1966 Civil Rights Act, "the legal foundations of [white] racism in America had been destroyed," as Brooks puts it.

"*Southern Segregation Falls Silently, Without Violence*," reported the Columbia, South Carolina, *State* on July 4, 1964.[8] But the contradiction of the nation's guarantee of civil rights for some at the expense of the human rights of all continued. (For instance, while the 1966 Civil Rights Act assured the selection of state and federal juries without regard to race, it banned racial and religious discrimination in the sale, rental, and financing of about 80 percent of all housing in the United States.) The walls of segregation and discrimination came tumbling down, but what of the segregationist and discriminator? What of *their* rights?

On July 2, 1964, the day Congress passed the Civil Rights Bill and two days before the 187th anniversary of the signing of the Declaration of Independence, Lester G. Maddox, owner of the Pickrick Restaurant in Atlanta, Georgia, declared his rights to a group of Negro civil rights activists who had come to test the new law: "You're not going to eat at the Pickrick today or any other time! This is my property, my business, and the Constitution guarantees me the right to operate it my way!"[9]

[8]Quoted in Brooks, *Walls Come Tumbling Down*, p. 260.

[9]I have purposely chosen Lester Maddox's situation as an instance where the discriminator's rights are violated because he is so despised by so many people for his segregationist views. But segregationist or not, Lester Maddox is human too; and as such, he has human rights as do all the rest of us.

When one of the men continued to leave the car to approach the restaurant, Maddox, armed with pistol and pick handle, ordered him off his property. "Get out of here now," he said. "I have the right to protect my property and myself, and that's what I'll do."

Most twentieth century Americans have no sympathy for Maddox's position and every Supreme Court since 1964 would surely rule against his assertion of his right to property. But at that moment Lester Maddox, the dissenter, was championing a fundamental principle of human survival and human liberty and in so doing joined the ranks of the men who signed the Declaration of Independence and the Constitution of the United States. The drama of the moment — Maddox wielding gun and pick handle as the blacks approached him — was unpleasant and ugly, to be sure, and its star, a contemptible fellow to many; but none of these elements have any bearing on the fact that Maddox was justified in his disobedience. The three Negroes disagreed and sued Maddox, contending that the public accommodations clause of the Civil Rights Act required him to serve them. On July 22 a three-judge federal panel in Atlanta ordered the Pickrick Restaurant to admit Negroes within twenty days. Ruling that the restaurant was subject to the powers of Congress to regulate interstate commerce and thus bound to obey the public accommodations clause, the panel issued a temporary injunction for its integration pending a possible ruling by the United States Supreme Court on whether the public accommodations clause was constitutional on all grounds.[10]

On August 10 Supreme Court Justice Hugo L. Black denied Lester Maddox's motion to delay the integration of his restaurant past the August 11 deadline set by the panel in Atlanta. On December 14 the Supreme Court upheld the constitutionality of the public accommodations section and ruled simultaneously that the section barred state prosecutions of demonstrators who had tried by peaceful means to desegregate business places covered by the act. President Johnson hailed the Court's decision and declared: "There already has been encouraging and widespread compliance with the act during the five months it has been law. Now I think we all join in the hope and the resolution that this kind of reasonable and responsible acceptance of law will continue and increase."[11]

Not everyone felt that such acceptance of the law was reasonable or responsible. Indeed, there were responsible people who questioned the very existence of the law. In a 1963 article on racism Ayn Rand had written: "If the 'civil rights' bill is passed, it will be the worst breach of property rights in the sorry record of American history in respect to that subject."[12] On August 13, before the Supreme

[10]The panel's injunction applied also to the Heart of Atlanta Motel, the owner of which sued to stop the government from enforcing the act at his motel, maintaining that travelers ceased to be involved in interstate commerce once they entered his establishment.

[11]Quoted in *Facts On File*, December 10-16, 1964, p. 434.

[12]Rand, *The Virtue of Selfishness*, p. 134.

Court ruled on the constitutionality of the public accommodations section, Lester Maddox announced that he was closing his restaurant. Why did he not comply with the law — allow Negroes to eat there — and keep his business open? Maddox writes: "It was simply that I was not going to knuckle under to a law that I believed went against the basic precepts of freedom as set forth in the Constitution, and so I shut down my business rather than violate a law I felt was unjust, as many were doing in the so-called civil rights movement."[13]

To many Americans, especially the liberal press, the Pickrick became a symbol for the South's holdout segregationists; its closing was a symbol of the triumph of Negro demands for equal rights, equal opportunity, and an integrated society. But for Lester Maddox, the Pickrick represented the business "I had painstakingly built over a period of two decades." For him the "closed" sign he hung on the door in September 1964 was not a symbol of the triumph of civil rights but "symbolic of the door that had been closed to individual opportunity and private property rights all over this land."[14]

After his 1974 defeat in a bid to return to the Georgia governorship, ten years after the passage of the Civil Rights Act, Maddox reopened his Pickrick Restaurant and Negroes went through the cafeteria line just like everybody else. "If it's something you can't do anything about," Maddox told a reporter, "you go along with it. The battle is over." He did not say whether he meant his personal battle against integration or the battle to preserve individual rights. It is likely that to Maddox they were one and the same battle: his right to discriminate had been sacrificed to imposed integration. And in losing his battle to determine who he would allow to patronize his restaurant, he had lost a measure of his right to property, as well as a measure of his right to freedom of expression. As journalist Edith Efron puts it: "A free mind and a free market are supportive of each other and one cannot be violated without violating the other. Men who cannot think freely cannot produce freely. And men who are prohibited from free production are not free to think."[15] Maddox's freedom of expression had been constrained but he had not lost his *right* to think. "By its nature, internal thought, reason, is free, it is *literally* an inalienable right," writes Efron. "It does not need a First Amendment to protect it. It cannot be regulated by the State. It is totally autonomous, totally self-regulated, totally private. Indeed, *there is no form of private property more absolute than the ownership of his own thoughts.*"

The law was imposed to regulate Lester Maddox's behavior, but his thoughts were the same in 1974 as they had been in 1964. His restaurant was now integrated but he remained a segregationist. "I believed then, as I do now, that it was my right under the Constitution to serve whomever I chose to serve in my place of

[13]Lester G. Maddox, *Speaking Out: The Autobiography of Lester Garfield Maddox*, p. 69.

[14]Ibid.

[15]Edith Efron, "The Free Market and the Free Mind."

business," he writes in his autobiography. "I am a segregationist and I chose to operate my business on a segregated basis. Because of this I was called a racist, although the words are far from synonymous. A segregationist is an individual — black, white, or any other color — who has enough racial pride and racial integrity and love for his fellow human beings to want to see all races protected and preserved."[16]

Maddox's observation that segregationists exist in all races is correct. His concept of segregation comes very close to the separatism once advocated by the Black Muslims. The similarity is there even though Malcolm X saw in them a distinct difference:

> Every time I mentioned "separation," some of them would cry that we Muslims were standing for the same thing that white racists and demagogues stood for. I would explain the difference. "No! We reject *segregation* even more militantly than you say you do! We want separation, which is not the same! . . . *Segregation* is when your life and liberty are controlled, regulated, *by someone else*. To *segregate* means to control. Segregation is that which is forced upon inferiors by superiors. But *separation* is that which is done voluntarily, by two equals — for the good of both!"[17]

What is interesting about the Black Muslim's concept of separatism is that apparently it does not require the force of government for implementation, as does the territorial separatism advocated by Roy Innis and the economic nationalism implemented by government-subsidized "black capitalism" schemes. This is not to say that Black Muslim separatism is at once antistatist, only that its voluntary implementation is not a statist position. This is, of course, not true for most forms of segregation practiced in the United States. The "Black Codes" of Reconstruction, Jim Crow laws, as well as the separate-but-equal doctrine sanctioned by the Supreme Court were all forms of institutionalized, coercive segregation.

Maddox claims not to advocate coercive segregation but the protection of his right to discriminate, and in this his position is like that of the Muslims who until 1976, did not allow whites to participate in their schools and businesses. The law has regarded the activities of the Muslims in a different light from those of Maddox, however. Black Muslims could demand to be served in Maddox's restaurant and be assured of legal sanction. But Maddox would not likely receive such legal insurance were he to have demanded to patronize Muslim schools and shops. A similar double standard has operated in the area of higher education. Since 1954, one after another of the all-white universities and colleges have opened their doors to black students under the threat of punishment by federal agencies. But no law has been imposed on black students who demand that the universities provide them with all-black living quarters and cultural centers. The difference be-

[16]Maddox, op. cit., p. 54.

[17]Malcolm X, *The Autobiography of Malcolm X*, p. 26.

tween private segregation and voluntary separation is that while the former is outlawed, the latter is allowed as the quid pro quo for law and order. Malcolm X's description of racial segregation as a means of control is correct, but so are coercive integration and voluntary racial separatism.

Both the white segregationists and the hard-line black separatists advocate the protection and preservation of their races and both deny being racists. But it is hard to imagine a nonracist advocating *any* scheme to protect and preserve the races, let alone that of segregation. One might ask: protect and preserve them from what? — the answer to which is: from each other. Why? To prevent their mixing, say the segregationists. To escape their control, say the separatists. But why is this necessary? To ensure the "purity" of that race which is superior, say the segregationists. To ensure a means of gaining power, say the separatists.

If the desire of the segregationist or the separatist to see all races protected and preserved is interpreted as the desire to prevent the biological mixing of the races, and if they are against such amalgamation and miscegenation because each believes another race mixed with his own will somehow taint his with "inferior" traits, then one would have to call them racists. Even if they are not against miscegenation where it exists but merely want to associate with people of their own race, one would still have to describe their attitude as race consciousness or racially prejudiced.

The ideas of Maddox and those of Malcolm X are clearly racist, and racism is most assuredly immoral. But was Maddox's dissension on July 2, 1964, a matter involving his prejudiced ideology or his property rights? Should his closing of the Pickrick Restaurant be seen as the act of a die-hard segregationist, or the act of a man who would rather close his place of business than have the government or other citizens tell him how to run it? Only Maddox knows what his motives were. But whether his was an act of courage or villany, no one had the right to force him into such action.

Before the passing of the 1964 Civil Rights Act, the law protected the right of men like Maddox and Malcolm X to practice voluntary racial segregation; the same law protected the right of men like Martin Luther King, Jr. to practice voluntary racial integration. It also sanctioned their right to persuade others to follow their ideas and actions, but it did not recognize a right to force others to think and act as they did. Yet to force Maddox's thinking and action is precisely what the Civil Rights Act provided for. At the price of his property rights, blacks were granted the privilege (not the right) to force their ideas of integration on Maddox. As already noted, political privilege cannot exist without the violation of human rights in the process. The standard used to determine whether Maddox should keep his business was not that of property rights, but the standard of political force. The question decided was not whether he could compete (successfully) with other restaurants on the segregationist terms he chose, but whether he would obey a law forcing him to integrate against his will. Of course, we will never know whether Maddox could have remained in business as a "holdout segregationist."

Human rights too do not entertain the question of whether men *should* possess certain attitudes and values, but whether they are free to express those attitudes and values in a manner that does not interfere with the rights of others. A man may hate others merely because they look and act differently from him. He is wrong in his judgment but he has *the right to be wrong*, and that right ought to be protected by law. Objective law should not take a position one way or another on the morality of a person's ideas; it ought to exist solely to protect his *right* to those ideas. Those persons hated by the discriminator may feel a lack of dignity because they are so hated; they may wish to change his attitudes, but they may neither seek legislative coercion to do so nor destroy his property in protest against his ideas. To quote Rand: "Racism is an evil, irrational and morally contemptible doctrine — but doctrines cannot be forbidden or prescribed by law. . . . Private racism is not a legal, but a moral issue."[1] One man's private expression of his race consciousness may conflict with the desires and preferences of others, but it does not interfere with their rights. But institutional racism necessarily entails the violation of individual rights, whether it be in the form of oppression as with public segregation ordinances or in the form of redress, as in the case of preferential hiring policies "to correct past discrimination."

We simply cannot begin to justly cope with the humanness of racism without first accepting the fact that every human being has the right to be wrong and that no one has the right to force an individual to be good. Adolph Hitler had the right to dislike Jews and others who were not of his illusionary "Aryan race"; and the German people had a right to blame their economic and political troubles on the Jews and other minorities. But they had not the right to force these immoral and prejudiced beliefs into practical expression because the only way such ideas could be so expressed was by punishing those whom they wrongly judged, and thereby violating their rights. Hitler did not think the Jews had the right to exist, but he did not have the right to remove them from existence. So long as Hitler's ideas remained just his own thoughts and he did not attempt to transform them into concrete reality, no one had the right to harm a hair on his head. But when he began to put his ideas into action by initiating force against the lives of those whom he hated and feared, he forfeited thereby all rights to his own life and deserved the retaliation that should have been immediately directed against him.

It may seem preposterous to suggest that so vile a man as Hitler could have the right to hate Jews. But the objectivity of human rights requires that private racism be regarded as the breach of morality that it is (and therefore not subject to legal punishment) until such time that it becomes the motivation for criminal behavior. And even then, it is the *crime* that should be punished, not the motive. Unfortunately, in its attempt to eliminate prejudice and discrimination, civil rights legislation has intruded on the morality of men and made a crime of their

[1]Rand, *The Virtue of Selfishness*, p. 134.

hatred and fears. How, then, should the government respond to the ideas and noncriminal behavior of discriminators in our society? In an essay critical of the introduction into our legal code of the category of "political crimes," Ayn Rand offers what seems to be the best approach to coping with the humanness of racism. She writes that under the American system of law the state may neither penalize nor reward an individual for his ideas. "It may not take any judicial cognizance whatever of his ideology." It may neither punish the noncriminal who holds and propagates the most reprehensible ideas nor allow to go unpunished the criminal whose ideas are considered most edifying. Since ideas do not violate the rights of others, they cannot be called a crime and cannot serve as the justification of a crime.[9] It is not a crime to believe that whites are biologically, intellectually, and morally superior to Negroes. However, one's belief that all men are created equal is no justification for initiating force against a white supremist. In a free society, the egalitarian and the racist have the same status under the law: it is between the criminal and noncriminal that the difference in status exists.

In this instance, what should be the proper relationship between citizens and the government is equally valid for private relations among citizens. For example, the regents of a private university may deplore the Marxism and racist rhetoric of Angela Davis and for that reason refuse to give her a teaching position. Miss Davis has the right to hold any views she pleases but she does not have the right to force the university to hire her. The issue here is not which doctrines are right, those of Davis or the regents, but whether each will be allowed to hold his ideas without sacrificing his judgment to that of someone else. A free society simply must allow for men to disagree, and its system of justice must extend even to those whose ideas are thought to be the most irrational and immoral.

III. *Rights of the Discriminated Against*

When Rosa Parks decided to sit in the front of a city bus in Montgomery, Alabama, she challenged a mode of transportation financed by her taxes as a citizen of that city. The city could not morally operate a segregated transportation system so long as it was run for the benefit of all the citizens and paid for by them. Mrs. Parks disobeyed the law in order to challenge its injustice. She said her feet were tired and she wanted to sit down, a purely personal desire, but resting her feet in the white section of a city-owned bus, as she did, turned the incident into a matter of public concern.

However, Lester Maddox's desire to run a segregated restaurant was never a matter that should have involved the society at large. He owned the restaurant and for twenty years had poured his labor into it without public assistance. Thus, it was an extension of his person. Its purpose was to offer a service to the public, but it was owned neither by the public nor a political agent of the public — i.e.,

[9]Rand, *The New Left: The Anti-Industrial Revolution*, p. 99.

the government. Thus, according to natural law and the Constitution, all members of the public and the government were prohibited from interfering with Maddox's ownership of the service he offered or the manner in which he offered it. But even though the Fifth and Fourteenth Amendments respectively prohibit the federal and state governments from depriving him of his right to property, that right has long since come to be treated as less than absolute by both government and citizens alike. It is generally thought that liberty and property are not absolute when the welfare of society is involved. And as civil rights leaders, legislators, and the Supreme Court saw it, how Lester Maddox ran his restaurant was a matter involving the welfare of society as they defined it at the time. Thus, while their definition of society's welfare required that legal protection be given to Mrs. Parks's right to sit where she wished on a public bus, that same definition required that protection be *denied* to Lester Maddox's right to serve whomever he chose in his privately owned restaurant.

The Parks and Maddox cases show that, having rendered human rights as arbitrary, legislators and the courts have progressively evaded the differences between public and private property. In addition they have become even bolder in applying the double standard of denying the rights of discriminators in favor of the rights of the discriminated against. But there is no way in a free society that the law can be used to the advantage of one citizen at the expense of another without infringing on the rights of both. Thus, once the government was given the power to violate the rights of men like Lester Maddox in behalf of the discriminated against, the way was also opened for men worse than Lester Maddox to use political force to violate the rights of the latter. As Maddox himself put it: "I was trying to protect not only the rights of Lester Maddox, but of every citizen, including the three men I chased off my property, for if they could violate my right of private property, then there would be nothing to prevent me from violating theirs."[20]

In 1964 not many people were in sympathy with Maddox's concern for a single standard of justice for discriminators and the discriminated against. But five years ago, his position was explicitly supported by the events surrounding a civil rights case in Mississippi that threatened to bankrupt the N.A.A.C.P., one of the defendants.[21] The circumstances that led to the court case began in 1966 when, in order to pressure officials of Port Gibson, Mississippi, for job programs and voting rights, the N.A.A.C.P. joined other civil rights groups in a boycott of white merchants, which lasted from April 1966 to February 1967 and continued on and off during the decade that followed. In a 1976 ruling, which awarded twelve white merchants a $1.2 million settlement against the N.A.A.C.P. because of the boycott, Judge George Haynes of the Chancellery Court in Hinds County, Mississippi, called the boycott *illegal* because the merchants had no say in the

[20]Maddox, op. cit., p. 57.

[21]The facts of the case are cited here from reports in the *New York Times*, August 12, October 1, 9, 21, 1976.

granting or withholding of the civil rights sought and therefore the boycott was "secondary" — a distinction between "public issue activity" (primary) and "private issue activity" (secondary).

The lawsuit was filed after a law was passed by the Mississippi legislature that sought to outlaw "conspiracies" to boycott businesses. The law had been introduced by a Port Gibson legislator who was one of the twelve complaining white merchants. Judge Haynes ruled that the N.A.A.C.P., the Mississippi Action for Progress, a federally funded antipoverty organization, and 132 persons had "wrongfully combined and colluded a civil conspiracy." He said the defendants had "illegally created a monopoly" for black businesses and "unlawfully interfered with business relations between the merchants and their customers."

The ruling said that the black objectives were "highly laudable and praiseworthy for the most part" but that the dispute had been between blacks and public officials in Clairborne County, not between blacks and white merchants. Citing Mayor Charles Evers of nearby Fayette, who was then the N.A.A.C.P. field secretary for the state, as the "unquestionable leader of this endeavor," Judge Haynes wrote, "The white merchants were conscripted into the controversy because the defendants believed them to be in a position of control or having the power to exert pressure to compel the public officials to grant their demands."

In a plea to Judge Haynes to overturn his ruling the attorney for the N.A.A.C.P. argued that the boycott had concerned "public issue activity" rather than "private issue activity" and thus had been "primary," and therefore legal, rather than "secondary." To hold that the boycott was illegal would be tantamount to abridging the right to free speech, he said. "The defendants were attempting to persuade the merchants of the town to abide by the laws of the United States."

The attorney for the merchants countered that "the fact that the boycott was designed as a means to an end and that the end might have been lawful does not make the boycott lawful." He added that because he frequently represented labor organizations in court, authorization of secondary boycotts would "give me and my clients a great weapon. But that is not the law, and I don't think it ever will be."

Having no legal expertise nor a working knowledge of the laws of the state of Mississippi, I cannot comment on the legality of the Haynes ruling, but I can question the moral implications of his statement and, therefore, whether the suit against the N.A.A.C.P. was just. (What is legal or illegal does not always square with what is just.)

The right to liberty entails the right to act, without the use of force or fraud, according to dictates of one's conscience. It also entails the requirement that one bear the consequences of his actions, which includes the judgment held of him by his fellowmen. They may be mistaken in their judgment of him but their right to liberty entails their right to think as they please (in this case, about him) and to act

accordingly, without violence unless in retaliation of violence. The N.A.A.C.P. and civil rights activists in Port Gibson apparently felt that they would need the support of the white merchants in the town in order to secure jobs and voting rights. (News reports did not say whether blacks had sought employment from the twelve merchants.) When the merchants refused to use their influence, the civil rights groups called on blacks to boycott their stores. The issue is not whether the boycott was justified or even legal, but whether those who felt discriminated against had the *right* to boycott the businesses of those merchants they believed were supporters of the discrimination against them.

Judge Haynes was correct in characterizing the boycott as an interference with business relations between merchants and customers, but he and the Mississippi legislature were unjust in making such activity "unlawful." For a private economic boycott (for whatever reasons) can be deemed illegal only by abrogating the economic relationship between merchant and customer and violating the rights of both.

The relationship between merchant and customer ought to be based on the fact that each has something the other wants. Each ought to be free to produce and trade what he produces. However, in a free society the businessman may not force the customer to purchase his product and the customer may not force the businessman to sell his product. The buying and selling that results between them should be determined by each man's choice to solicit what he needs from one who has it in exchange for a value equal to that of the goods, service, or money sought. The extent of the buyer-seller arrangement between merchant and customer is determined by the nature of their reliance on each other and the availability of the commodity or service each has to offer. Many buying and selling arrangements are secured by contracts that hold each party to an agreement that is binding over an extended period of time. But most transactions between buyer and seller are immediate, involving products that are in abundance and for small amounts of cash.

The primary interest that the merchant and customer have in each other is economic. The freedom to exercise his right to property entitles the merchant to create and otherwise acquire goods and sell them to willing buyers. The customers exercise their right to property by offering their monetary earnings or some other form of payment in exchange for the goods. Each person has the right to create, own, and dispose of his *own* property, not that of someone else. Accordingly, each may *withhold* his property from the market in general or from individual buyers or sellers and for whatever reason he may choose, whether wisely or foolishly. Provided that neither party is bound by contractual relationships with the government that dictate the nature of his participation in the market, the action taken is entirely personal and private. Thus, Judge Haynes was correct to call the black boycott a private issue activity and the N.A.A.C.P. attorney committed a disservice to his clients by insisting that theirs was a public issue activity (implying that public action should meet with greater favor from the law than private action). But the Mississippi law and Judge Haynes were unjust in outlawing the boycott on the basis of its private nature. They would have been more

justified had it been indeed "public" — i.e., action against private merchants by government agents or representatives.

I have said that the primary interest that merchant and customer have in each other is economic, but their action in the market may be *motivated* by anything *but* economic concerns. When a merchant opens his business each day he places himself in the position to be judged by customers not only on the basis of the goods and services he sells but also on the basis of his attitudes and behavior in the community. Some customers may refuse to give him their patronage simply because he does not offer the goods or services they would like to purchase. Others may withhold their business because the merchant is known to hold certain views they disapprove of. Customers have passed up certain merchants because they are members of certain racial or ethnic groups. In some cases even the sex of the merchant makes a difference to customers. The reasons for doing business or not doing business with a merchant are as varied as there are customers. But however motivated, the customer's purchasing power, which is entailed in his right to property, is inalienable, sanctioned by the Constitution, and ought to be preserved and protected by the law. The Mississippi court chose to do precisely the opposite: it called the purchasing power of the black boycotters an "interference" and punished them for it.

No law or statute is just that purports to protect civil rights at the expense of the basic human rights from which they are derived. Yet it was in the name of justice that the federal government violated the property rights of Lester Maddox, the discriminator, and the Mississippi state government violated the right of free speech of the N.A.A.C.P., the discriminated against. In providing that a person exercising his "right to demand service" at any business in a "named category" cannot be "lawfully" ejected from it or arrested for trespass, the public accommodations title of the 1964 Civil Rights Act violated the rights of merchants who chose to withhold their goods and services from customers of a given race, color, religion, or national origin. The Mississippi law prohibiting the economic boycotts violated the rights of customers who chose to withhold their patronage from merchants whom they believed were supporters of racial discrimination. As blacks had claimed the right to demand *service* from men like Lester Maddox, the Mississippi merchants claimed, in effect, the right to demand *patronage* from blacks. The judicial system that had made trespassing legal in 1964 was now making boycotting illegal in 1976. The system that punished white men for refusing to sell was now punishing black men for refusing to buy! When such injustices are suffered by both discriminators and the discriminated against in the name of equal justice for all, one has to wonder whether such solutions will contribute to the elimination of racism in America or to the reinforcement of it.

IV. *The Steady State of Justice*

When the Constitution abolished slavery and involuntary servitude it also made illegal the use of force to obtain service from another. A businessman who cannot

serve whom he pleases is not a businessman but a slave. The only right customers have is to *request* a man's services; but they have no right to force him to *provide* that service. In its sanction of a man's choice to request the services of another and in its simultaneous sanction of that person's right to refuse the service wanted, the Constitution reflects the principle that there are no conflicts of interest between rational men, that one man's gain is not necessarily another's loss. The only way such an imbalance can be created in the affairs of men is when they resort to the rule of force instead of the rule of reason. In throwing its weight behind enforcing the alleged "right" to demand service the government necessarily violates the actual rights of the individual who owns that means of service. And, thus, it attempts to get around reality by claiming that the existence of property has no cause, no effect — no reason for being.

In a free society one is free to hold contradictory premises — that is, an individual may be prejudiced *against* others or prejudiced *in favor* of them and participate in an open market that makes no distinction among men except in the realm of their economic role in the community. He may express his prejudice through various acts of discrimination for or against certain individuals or groups. He is free to express his biased judgment of others; but he is *not free* to escape the consequences of that choice, and he is not free to force others to implement his judgment or to comply with it. As he owns his business, so too does he own his bigotry and is responsible for the consequences of holding such an attitude.

If he is a restaurateur who discriminates against Negroes, the consequence of his bigotry is that I am forbidden to eat in his restaurant. What means do I have to change this consequence? I may attempt to change the attitudes that make the consequence possible by persuading him of the irrationality, immorality, and injustice of his bigotry. If I fail to persuade him I may act to punish the consequences by affecting the economic expression of his bigotry: either by persuading his patrons to boycott the restaurant and thus cause him to lose profits, or by setting up my own restaurant (or encouraging others to do so) and force him out of the market by competition. These are the only *just* and *voluntary* actions I may take without violating his rights. As Tibor Machan puts it, "Knowing what is right does not entitle one to force others to do what is right."

But I may take another route — the *criminal* action. I may act to change the consequence of his bigotry by forcing him to serve me (acting against his judgment) at the point of a gun. I may affect the economic execution of his bigotry by blackmail, by destroying the restaurant itself, or by killing him.

Or, I may seek *legislative* action against him that would declare his discrimination against Negroes illegal. Thus by making his ideas and behavior illegal I have used the law to force into existence the consequence I preferred (integrated restaurants) and prevented the consequence he preferred (segregated restaurants). But have I been just? Race consciousness is immoral; the expression of it in acts of prejudice and discrimination is unjust. But should we, on the basis of its immorality and injustice, make prejudice and discrimination illegal?

An answer to this question lies in Machan's observation that the implementation of moral values by edict with equality and efficiency would be impossible because "those doing the implementing would necessarily enjoy unequal status."[22] Men must be free to discover the right and the wrong, the good and the bad; but their being free is no guarantee that they will choose to be good or bad. Political freedom is necessary for the expression of man's good, and it is just as necessary to identify the bad. Morality legislation interferes with the individual's ability to judge what or who is good or bad, beneficial or inimical to his interests.

The issue of political freedom is not to judge the moral rightness or wrongness of sociopolitical decisions by individuals (and to assign consequential rewards or punishments to these decisions), but to determine the best means of assuring that such decisions may be made without coercive constraints from other individuals or institutional entities. Just laws do not sit in moral judgment on those decisions, but judge whether they are freely made, whether the person executing them is engaged in voluntary or compulsory activity, and whether that activity threatens the freedom of others. In other words, the concern of political liberty is not to decide what decisions men should (or should not) make within the boundaries of their own lives, but to determine that they are able to make such decisions (rightly or wrongly) in the absence of coercion and that they have the freedom to experience the consequence of those right or wrong decisions.

When morality legislation makes it illegal for a prejudiced restaurateur to follow the dictates of his conscience, it not only punishes him for his ideas and his consequential behavior at the expense of his right to private property, but by preventing the actualization of his bigotry, the law removes from reality the factual evidence men need by which to judge his character. Once he is forced to act against his biased judgment, those deploring immorality such as his and committed to fairness are no longer in a position to know whether he is a racist or not and are therefore without means to oppose him. The flow of justice is further interrupted when, finding that there is now no rational way to perceive the "intent" to discriminate, civil rights administrative agencies such as the Equal Employment Opportunity Commission (EEOC) now equate the "underrepresentation" of minorities in jobs with "exclusion" and "discrimination." Statistics and percentages — i.e., quotas — have become the means by which discrimination is proved or disproved.[23] Contrary to the very backbone of the American judicial system, employers are considered guilty (by omission or commission) until *they* prove *themselves* innocent of discriminatory practices.

It would be well to remember that a restaurateur or merchant owns his place of business not as a means for intimidating Negroes as such, but for the purpose of providing a livelihood for himself. And this is the ground on which he must be

[22]Machan, *Human Rights and Human Liberties*, p. 49.

[23]Thomas Sowell, *Affirmative Action Reconsidered: Was It Necessary in Academia?*

objectively rewarded or justly punished. That a restaurant owner is prejudiced and that this is his motive for refusing service is irrelevant in judging whether he has violated a potential customer's rights. What is relevant is that he is the owner and may determine how his establishment should be used, who should use it, whom he should hire and fire, etc.

That he may not purchase goods and services from someone who wishes not to sell (for whatever reasons) is the only fact the customer can consider in judging whether he has been treated fairly. That he believes integrated restaurants make the best kind of restaurants and contribute to racial harmony is irrelevant. What *is* relevant is that *he does not own the restaurant* and may not impose his morality on the person who does. In a free society, the rules of ownership of an enterprise and the terms by which the enterprise is conducted are set by the owner. Patrons and other entrepreneurs who disagree with how an establishment is run are, as Rand puts it, "free to go elsewhere and seek different terms."[24]

There are those who argue that while this prescription may be suitable in dealing with just one discriminator, surely the application of justice must be altered when there are a thousand such merchants discriminating against all Negroes as a group. But such a proposal negates the objectivity of the standards of justice. The whole point of justice is that its principles are universal and absolute, that they must be applied to the same degree whether in relations between two people on a desert island or among the nine million inhabitants of New York City. The nature of justice and the extent to which it is applied are not determined by the number of people involved but by the laws of reality and the natural rights that all men possess.

Justice does not ask whether an action is "fair" according to conventional standards. It is, rather, the rule of conduct that repels or retaliates action inimical to the requirements of human nature (rights) and encourages action beneficial to human survival. The legal minded Romans of antiquity, whose mission it was to give laws to the world, defined justice as "the steady and abiding purpose to give every man that which is his own" — what Rand defines as "neither seeking nor granting the unearned and undeserved, neither in matter nor in spirit." The purpose of justice, then, is to establish and maintain a steady state between the rights inherent in human nature and the implementation of those rights. As Rand points out, justice forbids "the material implementation of [rights] by other men; it includes only the freedom to earn that implementation by one's own effort."[25]

Justice is the maintenance of a steady state between the facts of reality and one's moral appraisal of his fellows, what Rand further defines as "the act of judging a man's character and/or actions exclusively on the basis of all the factual evidence available, and of evaluating it by means of an objective moral

[24]Rand, *The New Left: The Anti-Industrial Revolution*, pp. 41-42.

[25]Rand, *The Virtue of Selfishness*, p. 97.

criterion."[24] That objective moral criterion must be based on a man's nature as a rational being who requires certain rights of existence and whose survival depends on his capacity to think and choose among alternative ideas and actions he judges to be in his self-interest.

Every human being owns his person, his thoughts, his actions, and their consequences. When we force consequences into existence other than those that would naturally occur as the result of a person's thought and action, we upset the balance between his identity and the laws of reality. Some consequences must be prohibited — such as those of the criminal — in order that the consequences from the implementation of rights may be manifest. We must prohibit or punish stealing, for example, as the just consequence for men who take from others what they have not earned or produced, and as a protection of men who produce and earn their means of livelihood. This is why men in a rational society establish the law — to curtail action and to punish action taken in violation of it. But not all laws are just. Laws like the public accommodations title of the 1964 Civil Rights Act, affirmative action regulations, and the Mississippi antiboycott ruling are offensive — offensive because they strike at justice and because the enforcement of them requires exempting men from the laws of reality and exempting reason from their nature, nullifying it as the requirement of their survival.

The purpose of moral (just) law is not to regulate morality, but to prevent or punish the violation of human rights. "The law may not make a man love me," said Martin Luther King, Jr., "but it can keep him from lynching me." The law may punish the violation of an individual's rights, but it has no inherent power to reform the attitudes of the violator. Yet, the expectation of the civil rights movement was and is that under the condition of being forceably brought together, men will come to love one another. No consideration is given to the rights of the individuals involved and every effort is directed toward imposing on some men the ideal of a "good society" held by others.

The desire for a "beloved community" has no value outside the context of the rights of those who are to compose such a community. The desire for a "social order of justice" has no value outside the context of justice. The goal to change the hearts and minds of men has no value outside the context of man's right to his ideas and actions. The struggle for equal opportunity has no value outside the context of man's independence. The achievement of racial integration has no value outside the context of voluntary association. The desire to cure the "disease of racism" is of no value outside the context of the lives of the men so "infected."

The end does not justify the means.

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[24]Rand, *Introduction to Objectivist Epistemology*, p. 49. See also *Atlas Shrugged*, pp. 1019-20.

V. *Concluding Remarks*

On August 28, 1963, amid what one writer called "a mood of quiet anger and a mood of buoyant exuberance," before a sea of over two hundred and ten thousand Americans that stretched from the Washington Monument to the Lincoln Memorial, Martin Luther King, Jr. told the world about his "dream" for his country, his fellow Negroes, and his children:

> I have a dream that one day this nation will rise up and live out the true meaning of its creed: "We hold these truths to be self-evident; that all men are created equal."
>
> I have a dream that one day on the red hills of Georgia the sons of former slaves and the sons of former slaveowners will be able to sit down together at the table of brotherhood. . . .
>
> I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.

And he dreamed of the day when all men could join hands and sing: "Free at last! Free at last! Thank God Almighty, we are free at last!"

It was a noble dream and the millions who heard it felt ennobled by it. Said one writer: "It was no private vision, nothing esoteric, but a personalized translation of the American heritage taught to every schoolboy, forged anew in a context of the Negro experience and detailed in terms of his, Martin King's, identity as part of that experience, its legacy and destiny. . . . Right out of elementary civics, the lesson, in this context, formed an ironic exegesis of our democratic platitudes."[27] But however noble and however deeply embedded it lies in the American expectation, the dream of brotherhood cannot be forced on men as the solution to the "humanness of racism."

Two wrongs never make a right.

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[27]Miller, *Martin Luther King, Jr.*, p. 166.

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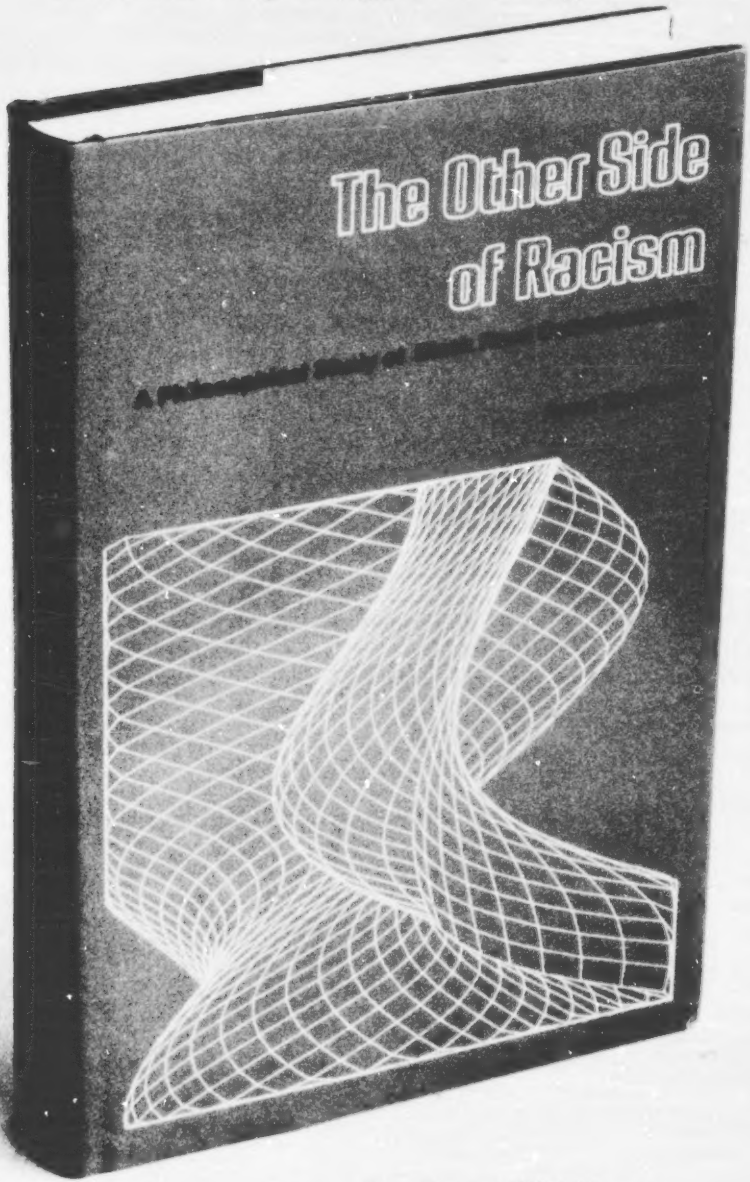

by Anne Wortham

Ohio State University Press

Property Rights, Human Rights, and Minorities: Comment

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This paper points out, entirely correctly, that changing laws to eliminate or reduce racial discrimination, while serving to expand the rights of discriminated against minorities, simultaneously serves to reduce the rights of those with a desire to discriminate. The author goes on to argue that in at least two areas the current state of civil rights law is wrong: such laws interfere in the private use of private property (e.g., Lester Maddox's restaurant) and, by mandating such things as quotas, enforce group rights rather than individual rights. The moral arguments about the incorrectness of these laws and rulings are based on a natural rights theory.

My comments on the paper will be divided into two parts. First, I will discuss natural rights theory and provide an alternative based on economic analysis. Second, I will discuss some of the reasons suggested by public choice theory for the form of the current interpretation of civil rights laws.

Natural Rights. As an economist, I find the concept of natural rights somewhat hazy and unfocused. This is not to say that I disagree with the conclusions which some advocates of natural rights theories reach, but only that I find the reasoning somewhat difficult. Moreover, starting with a belief in natural rights, it is possible to reach conclusions which will seem to be diametrically opposed to each other. Perhaps this is because there is no objective standard by which to measure natural rights. Moreover, there is no mechanism in society to enforce whatever conclusions a natural rights argument leads to, so that, even if a consensus on the implications of natural rights in some area could be reached, policing of the consensus would be difficult or impossible.

Rather than beginning with the idea of natural rights, an economist interested in the question of rights might begin with the Coase theorem[1]. The issue is defining some property right; the situation is such that, if the right is given to party A, then party B loses, and conversely. For example, if Lester Maddox is given the right to run a segregated restaurant, then those blacks who would like to eat in the restaurant are denied this right; if blacks are given the right to eat in the restaurant, then Maddox is denied the right to discriminate.

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[1]Ronald N. Coase, "The Problem of Social Cost," *Journal of Law and Economics*, Vol. 3, 1960.

The import of the Coase theorem is this: Under certain circumstances, the initial allocation of the right is irrelevant. Specifically, if transaction costs are low enough, then the party to whom the right is most valuable will be able to buy this right from the other party, and the initial allocation has implications for income distribution, but not for the final state of resource allocation reached in the economy. If Maddox is given the right to discriminate and blacks find eating in the restaurant worth more than Maddox finds discriminating, those who want to eat there will be able to pay a bribe to Maddox and eat in the restaurant. If the right to discriminate is worth more to Maddox than the right to free access is worth to blacks, then they will not be able to pay the bribe, and the restaurant will remain segregated. Conversely, if blacks are given the right to eat in the restaurant and the right to discriminate is worth more to Maddox, then he will be able to pay a bribe and maintain the restaurant as a segregated facility.

Of course, the conditions of the theorem are not always met. In particular, the results assume that transactions costs are zero; in reality, this is not so. In the case at hand, it is clear that transactions costs were sufficiently large to obviate the result of the theorem. Before 1964, Maddox ran a segregated restaurant and potential black patrons did not bribe him to change his policy; after 1964, the restaurant was integrated and Maddox did not bribe his black customers to stay away. Thus, it is clear that transactions costs were non-zero in this case, else one of the payments would have been made.

Richard Posner[2] has discussed the situation in which transactions costs are sufficiently high so that the Coase theorem will not operate. In this situation, he argues that the right will generally remain with the party who gets it initially, for the transactions costs of buying the right will be prohibitive. If this is so, then the right, according to Posner, should be given to the party who would have bought it if there were no transactions costs. That is, the right should be given to the party who values it most highly. In practice, of course, in many cases this principle is difficult to apply. Nonetheless, it does at least give some potentially measurable way of assigning rights, and therefore may be preferable to the natural rights theory used in the paper. Whether discriminating owners of restaurants would have valued the right to discriminate more highly than customers would have valued the right not to be discriminated against is a difficult point, and I will not provide any answer here. However, it is at least arguable that customers would have valued the right more highly than discriminators and that, therefore, the 1964 Civil Rights Act may have been an efficient law.

Quotas. The second major thrust of civil rights laws with which the author disagrees is the interpretation of the 1964 Act which has lead various quotas in, e.g., admission to universities. Professor Wortham argues that this interpretation is incorrect because the law was aimed at individual rights rather than at group

[2]Richard A. Posner, *Economic Analysis of Law* (Boston: Little, Brown, 1977).

rights. As an economist, beginning with an individualist perspective, I quite agree with her conclusion.

Why has the Act been interpreted so as to give rights to groups? Here, I must disagree partially with her argument. She blames ideological shifts in attitudes for the change. While I am not completely adverse to arguments based on ideology,[3] I think that in this case there is a simpler explanation, which is an implication of public choice theory.

One important principle of this theory is that concentrated groups are more easily able to obtain favorable legislation and interpretations than are diffuse groups. In the case of integration, there are two concentrated groups which can be observed to benefit from imposition of quotas. There are, first, the members of the minority which directly benefit from the quotas and, second, those members of the government bureaucracy who are in charge of enforcement. Those who lose from quotas include those individuals who do not get the positions which are allocated by quota and also consumers who must pay higher prices because relatively less qualified providers of services are chosen. With some exceptions (Bakke, Defunis), most individuals in the first group do not bother to protest, perhaps because their loss is generally not easily attributable to the quotas. Individuals in the second group probably do not even perceive that they lose and would, therefore, have little interest in protesting.

In the case of civil rights legislation, what probably happened is this: A situation existed in which many public facilities, paid for by taxpayers of all races, were segregated. I suspect that almost any theory of race relations, based on either economic foundations or on moral arguments, would find this wrong. At any rate, laws aimed at addressing this problem were passed, and the laws required nondiscrimination. However, to enforce the laws, a bureaucracy was established. After the bureaucracy was in place, a new special interest group existed. The bureaucrats themselves had an interest in enforcing the laws. Once nondiscrimination became policy, then a much smaller bureaucracy would have been able to maintain this situation than was needed to bring it about. However, bureaucrats do not like to lose their positions, and therefore this solution would have been resisted. The alternative was simply to expand the definition of compliance and introduce quotas. Members of minorities would have benefited from such quotas, and therefore would have aligned themselves with the bureaucrats, creating a powerful political coalition with an interest in quotas. Whether this coalition will persist or whether current changes in the political climate will lead us back to a situation in which nondiscrimination is enforced but quotas are not is a difficult question, and one which I will not address here.

[3] James B. Kau and Paul H. Rubin, *Congressmen, Constituents, and Contributors* (Boston: Martinus Nijhoff, 1982).

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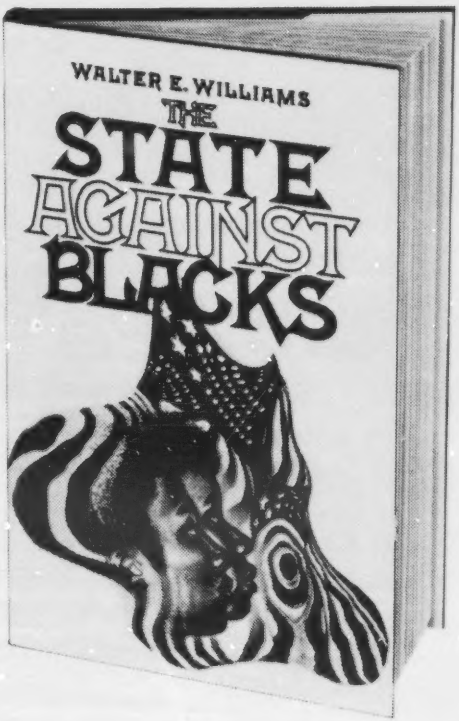

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The Minimum Wage and the Davis-Bacon Act: Employment Effects on Minorities and Youth

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I. *Introduction*

Black Americans have fared poorly in the job market in recent years. The clearest indication of the problem's magnitude lies in the rate of unemployment for black youth. According to official government statistics, the black youth unemployment rate has topped 40 percent. Some community organizations argue that the rate more likely is 50 percent. Neither of these rates is acceptable. In plain language, a 50 percent rate of unemployment means that when one walks down city streets, every other young black person he passes is without a job.

These figures indicate the magnitude of the employment problem, but one cannot appreciate the difficulty the political establishment has had in solving the problem until the problem is put into perspective. At the same time, we are experiencing such high unemployment for minorities and youth, we are also witnessing a shortage of skilled workers. It was disclosed at a hearing of the Joint Economic Committee last year that the nation faces a skilled labor shortage of 2.5 million. How can this dichotomy exist? Because we have focused too much attention on liberal arts education while neglecting mathematics, science, and technical education? Is it because the numerous employment and training programs which are spread through the federal government are misdirected? Or do high unemployment and the skilled labor shortage exist simultaneously because minimum and prevailing wage laws prevent on-the-job training for skilled labor positions?

No longer can we assume without study that federal employment programs are working effectively and can go without revision. No longer can we accept labor unions' assertions that wage protection laws which help their members do not hurt those who seek to step onto the first rung of the economic ladder.

II. *Effects of Minimum Wage Laws on Youth and Minority Unemployment*

The effect of minimum and prevailing wage laws is an excellent place to begin a discussion of the factors which contribute to minority and youth unemployment.

Repeal of the minimum wage could be expected to increase employment opportunities for young men and women who bring few skills to the workplace.

While the new jobs which would be available to young workers are often labeled "dead end" jobs by social scientists and community activists, they have great desirability in the eyes of teenagers looking for their first experience in the world of work. These teenagers realize that as they seek more substantive jobs later in life, their interviewers will attach substantial value to their entry level work experience. Teenagers know that future employers will assume they have developed positive work habits, healthy attitudes toward work, and respect for supervisors. Young people also appreciate the opportunity to find entry level jobs because these experiences help them master job search techniques, allow them some degree of financial independence, and allow them to make mistakes at a time when they have few responsibilities.

Of course, society benefits from the increase in low level job opportunities as well. Long-term benefits include tax revenues from productive workers instead of welfare payments to the nonproductive. Short-term benefits include the decreased likelihood of these workers engaging in crimes against their neighbors.

The national minimum wage was established by Congress in the Fair Labor Standards Act of 1938. The intent was to entitle all workers to "a minimum standard of living necessary for health, efficiency and well-being." It is commendable that Congress would pass legislation to protect American workers from exploitation in Depression-era sweatshops. Establishment of a law to eliminate substandard pay was intended also to help employers, with increased production expected to result from the beneficial effects of increased wages on the workers' health, morale, and efficiency. However, the good intentions of Congress in 1938 have led to tragedy for thousands of young people today.

During the relative prosperity of the 1970's and 1980's, the often-increased minimum wage has robbed many young people of opportunities to enter the labor market. Research efforts, especially those focusing on the lowest paying industries and job categories, have demonstrated convincingly that the minimum wage has an adverse effect on the young person's ability to find work.

As the federal government has raised the minimum wage repeatedly, unemployment has been exacerbated. Mom and Pop stores have ended up being run by mom and pop alone. They no longer find it in their economic best interest to hire teenagers to help out. Gas stations with attendants at every pump and grocery stores with bag boys who wheel customers' groceries to their cars have become mere memories of the way things once were.

Pricing whole job categories out of the market is but one of the ways by which higher wages lead to a limitation of employment opportunities. Manufacturers finding wage rates rising relative to productivity sometimes respond by substituting machines for workers. Other manufacturers facing this problem move to countries where wages are lower.

Job opportunities are lost as a result of another kind of decision made by businesses. Agreeing to pay higher wages, they are usually forced either to charge higher prices for their products or to sell products of lesser quality. If consumers respond by choosing cheaper and better made items instead of inferior items made by higher-waged workers, companies lose profits and ultimately are forced to eliminate jobs which previously existed.

Arthur Burns, former Chairman of the Federal Reserve Board, pointed out in his 1966 work, *The Management of Prosperity,* that the ratios between teenage unemployment and adult male unemployment rates were invariably higher in the six months following a federally mandated increase in the minimum wage than the six months prior. Burns also showed that a 25¢ increase in the minimum wage leads to a rise of eight percentage points in the minority unemployment rate.

In 1938, the Labor Department reported to the President that between 30,000 and 50,000 workers lost their jobs because of the minimum wage within *two weeks* of the Fair Labor Standards Act's imposition. About 90 percent of these workers were in the South and were concentrated in a few industries, such as lumbering, bagging, tobacco stemming, and pecan shelling. The textile industry was also affected substantially by the minimum wage. They substituted machinery for labor, as did those in the agricultural industry.

The 1956 increase had a more severe effect than previous minimum wage increases. Sixteen so-called high impact industries reduced their employment rolls by 10 to 25 percent. The defense boom which helped in 1938 and the economic upswing resulting from the Korean War after the 1949 minimum wage went into effect had no counterpart to help the situation after 1956.

The disemployment trend has continued with the most recent increases in the minimum wage. According to a 1963 Labor Department publication, *Effects of Minimum Wage Rates Established Under the Fair Labor Standards Act On Retail Trade in the United States and Puerto Rico: A Study of Changes in Wage Structure of a Matched Sample of Retail Establishments, 1961-1962,* the 1961 increase had a substantial affect on low-wage retail workers who were brought under the Act for the first time. In nonmetropolitan areas of the South, employment declined in the covered retail trade from 160,000 in June, 1961, to 143,000 in June, 1962, while noncovered retail trade employment *increased* from 549,000 to 574,000.

Another noteworthy observation regards comparisons of youth and adult unemployment rates in countries such as the United States, which have minimum wage laws, and countries such as Germany, which exempt youth from the minimum wage. "Youth Unemployment and Minimum Wages," a bulletin published by the Bureau of Labor Statistics at the U.S. Department of Labor, indicates that no significant difference exists between youth and adult unemployment rates in Germany and other countries with the youth exemption. In the United States, with almost-universal coverage, there is a different reality: Youth unemployment is practically triple the rate of adult unemployment.

All studies indicate that as the minimum wage has hurt American youth, it has had even worse effects on black youth employability. The impact of minimum wage escalation on black youth is made clear by a comparison of the unemployment rates of white and nonwhite youths through the last few decades. In the late 1940's and early 1950's, young blacks had a *lower* unemployment rate than did whites of the same age group. But after the minimum wage increased significantly, especially in 1961, the black youth unemployment rate has increased to the extent that it is now a multiple of the white youth unemployment rate.

Civil rights leaders, liberal black politicians, and others who claim that today's black youth unemployment problem is due to racism have obviously ignored these figures. Even with affirmative action programs to correct past discrimination and equal employment opportunity statutes to combat present discriminatory practices, black youth unemployment persists at a miserable level. If black youth unemployment is to be arrested, it must be accepted that the minimum wage is a major contributor to young blacks' difficulties.

Repeal of the national minimum wage is the appropriate solution. But there is little likelihood that Congress will repeal this Act, which has been in effect for more than a half century and has been adjusted upward numerous times from the original minimum of twenty-five cents an hour to the current $3.35 level.

An alternative approach is a subminimum wage for youth. Every year since 1972, there have been attempts to legislate what has been called a wage differential, a subminimum wage and a youth opportunity wage. These bills have been sponsored by Republicans and Democrats, with the most promising introduced on January 30, 1981, by Senator Don Nickles for Senator Orrin Hatch, Chairman of the Senate Labor and Human Resources Committee. The Youth Opportunity Wage Act would provide for a subminimum of 75 percent of the minimum wage for six months. Therefore, under the current $3.35 minimum, a worker who is less than twenty years old could be paid no less than $2.51 an hour. This new subminimum wage would be of substantial benefit to young people who want or need to experience the world of work. Their chances of employment are increased because the differential would remove for the employer a quarter of the cost of hiring them.

However, there have been arguments against such an action on behalf of young people. Labor union witnesses at a Senate Labor subcommittee hearing in March 1981 called the proposal "a cut-rate wage bill for cut-rate employers." But the legislation sponsored by Senator Hatch would allow employers to pay the subminimum for no more than 180 days. After such time, the employer would be obligated to pay at least the full minimum wage to the young worker who has gotten his foot in the door and received on-the-job training.

Older workers would not be hurt. The proposal suggests penalties for businesses which fire older workers in order to hire teenagers at the subminimum. Union members would not be hurt by the proposal because most union members, if not all of them, earn far in excess of the minimum wage.

Many have argued that the minimum wage should not be tampered with because any man or woman earning the minimum is probably having trouble supporting a family as is. This notion should have little merit in an argument over the proposal because those who are likely to be paid even the full minimum are young people who have no family support responsibility. In fact, data indicate that most teenagers earning the minimum wage today are members of families with above average income. The establishment of a subminimum would open up many new opportunities, a portion of which would benefit youngsters who may actually need to make a contribution to their families' well-being.

The Hatch bill is not the only proposal in Congress. Other bills have suggested a youth wage at 85 percent of the minimum. This would make the youth differential wage $2.85 as compared with Hatch's $2.51 an hour. Proponents are flexible on their precise level, but all of them are in solid agreement on the benefit of a wage differential. Logic should follow that the lower the wage, the greater the effectiveness in increasing young people's employability.

Minority men and women are hurt severely by minimum wage laws because the set rates restrict their ability to compete. Consider the effects of mandated minima in general terms. A young black man would most likely win a job shampooing carpets over an older and more experienced white man if the black man would be willing to work for $5 an hour while the white man demanded $8 an hour to do the same job. But if a government body — federal, state, or local — were to mandate a wage floor of $8 or even $7 an hour for carpet shampooing, this young black man's ability to compete with the older and more experienced white man would be severely restricted. This, of course, is not to suggest that blacks should be paid less than whites for equal work; this *is* to suggest that blacks need to retain the negotiation of their wages as a tool for competition.

Two decades ago, the unemployment rates for young black men and young white men were much closer. The widening gap is related to the lessening of young black men's ability to compete.

Another reason why arguments in favor of regular increases in the minimum wage are faulty is that they ignore the fact that most people who are on the upper rungs of the economic ladder began their climb from the very first rung.

III. *Effects of the Davis-Bacon Act on Youth and Minority Unemployment*

The Davis-Bacon Act is the nation's first federal law affecting minimum wages for private sector employees. The measure was enacted in the midst of the Great Depression, seven years before the Fair Labor Standards Act of 1938.

Because of the Depression, the federal government undertook numerous public construction projects as a means of stimulating economic activity and providing jobs. However, workers in many northern cities saw no benefit from the law's enactment because itinerant workers from the South captured the jobs by

offering to work for less than the going wage. (That occurrence is in itself evidence of the effects of wage rates on employment opportunity.) To protect the local workers, Congress passed the Davis-Bacon Act.

The Act requires the Secretary of Labor to conduct regular surveys to determine the prevailing, or usual, wage paid in each geographical area for specific skilled tasks. No worker involved in a federally financed or federally assisted construction project can be paid below that wage. In other words, if the Labor Department determines the prevailing wage for carpenters in the Chicago area to be $12 an hour, $12 becomes the minimum wage which can be paid to carpenters working on federal projects in Chicago. There are a number of reasons why this wage mandate discourages employers from hiring more workers.

Laborers are usually young people who have had little or no experience in construction work. The young, unskilled workers are willing to accept lower wages because they receive the benefit of moving into the construction labor market. Along with mixing mortar and pushing wheelbarrows, they have the opportunity to work with the skilled tradesmen, learning as they go, so they can later be paid higher wages for doing the job of the journeyman.

But, while many contractors make extensive use of laborers, Davis-Bacon makes few allowances for them. Contractors are discouraged from hiring low-skilled or unskilled workers for federally financed jobs because the Davis-Bacon Act requires that any time anyone picks up a tool of a trade he must be paid as a journeyman in that trade. The contractor on a federally funded or federally assisted project is, therefore, forced to pay laborers as painters one minute and carpenters the next, always higher than the unskilled or low-skilled workers otherwise would be paid. The mandate of higher wages defeats the contractor's reason for hiring young low-skilled workers.

There is a second reason why Davis-Bacon has a negative effect on employment opportunities for minorities. Blacks and other minority workers are typically employed in the open shop, or nonunion, sector of the construction industry. Since the Labor Department often determines the prevailing wage of an area to be the union wage, many nonunion contractors are discouraged from even bidding for Davis-Bacon jobs. Thus, a lessening of opportunities results for minority construction workers who are employed in the nonunion sector.

Davis-Bacon obstacles to neighborhood self-help homesteading projects prevent young people, especially minority youth, from gaining valuable construction experience. The labor unions work to hinder such projects because homesteading efforts have the potential for tremendous success without need of union workers. The unions are willing to let the homesteading projects proceed only if the Labor Department mandates favorable trainee-apprentice ratios and strict adherence to prevailing wage guidelines. Since the union apprentice wage is much higher than neighborhood groups would choose to pay inexperienced homesteaders, the union involvement often has the effect of blocking such proj-

ects. Again, Davis-Bacon prevents minorities and youth from gaining work experience on self-help construction projects.

Though the Act requires the Labor Department to include all wages paid for performing similar work in a geographical area when determining the prevailing wage, the U.S. General Accounting Office reported to Congress in 1979 that the Labor Department often failed to do so. This failure on the part of the Labor Department was especially severe in its effects on Indian reservations. Rather than consider wages paid to Indians on privately financed projects, Labor usually held the union wages from the closest urban area to be "prevailing" for the reservations. The result, obviously, was the limiting of employment opportunities for the Indians.

When Davis-Bacon was enacted by Congress in the 1930s, the intent was to prevent outside workers from moving into an area and taking away jobs intended for local workers. Yet, this is precisely the result of the Act's application on Indian reservations. Contractors would never hire unskilled or low-skilled Indians at high Davis-Bacon wages when they could import white, skilled, union workers at the same rates. Partly due to Davis-Bacon, some Indian communities have unemployment rates as high as 80 percent.

Forty-one states have their own "little Davis-Bacon" laws. In fact, six states enacted prevailing wage laws before Davis-Bacon became law in 1931. The first of these was in Kansas a full forty years earlier, in 1891. It is noteworthy that the states which have not enacted prevailing wage laws are among those with least severe unemployment rates. These states are Georgia, Mississippi, North Carolina, Virginia, Iowa, North Dakota, South Dakota, and Vermont. At this writing (January 1982), the national overall rate of unemployment is 8.5 percent and the national rate of black unemployment is 16.3 percent. The rate for youth is 21.7 percent and for black youth is 46.7 percent. (Similar breakdowns are not available on a state-by-state basis at this time.)

Comparisons of national rates of unemployment with selected rates of unemployment in non-"little Davis-Bacon" states are quite illustrative. Only one of the states which are without their own prevailing wage laws has an overall rate of unemployment which is greater than the national rate, and few non-"little Davis-Bacon" states have youth and minority rates higher than the national average.

Though the Davis-Bacon Act is applicable to federally financed construction projects in every state, "little Davis-Bacon" laws may be more onerous to aspiring workers because the state laws spread the coverage of prevailing wage requirements to a larger number of projects.

As is the case with the minimum wage, Davis-Bacon and "little Davis-Bacon" laws have the greatest negative effect on those who are most likely to receive the lowest wage. Included in this group of low wage earners, of course, are young people (about 25 percent), older people who are unskilled or low-skilled,

and members of minority groups which have been systematically discriminated against in the labor market through the years.

The employment picture would brighten for young people and blacks if the Davis-Bacon Act were repealed. Contractors would be encouraged to hire more young people as laborers and helpers, affording them the opportunity to break into the construction labor force. The Economic Forecast and Survey Center of the United States Chamber of Commerce estimated in 1979 that employment would increase by as much as 150,000 jobs nationwide if Davis-Bacon were repealed.

In 1981, the repeal of "little Davis-Bacon" laws was considered by the legislatures of fourteen of the forty-one states which have them. Utah was the only state to successfully repeal its prevailing wage law. In that case, the override

Overall Unemployment	(January, 1982)
National Average	7.3%
Georgia	6.4
Mississippi	7.5
North Carolina	6.5
Virginia	5.1
Iowa	5.7
North Dakota	4.9
South Dakota	4.7
Vermont	6.4
Youth Unemployment	
National Average	17.8
Georgia	16.1
Mississippi	22.2
North Carolina	18.6
Virginia	18.3
Iowa	14.9
North Dakota	12.9
South Dakota	8.5
Vermont	12.3
Minority Unemployment	
National Average	13.6
Georgia	13.1
Mississippi	14.0
North Carolina	12.1
Virginia	11.1
Iowa	Not Available
North Dakota	22.6
South Dakota	18.0
Vermont	Not Available

of the governor's veto was necessary. The Colorado and New Mexico legislatures passed repeal legislation but failed to override their governors' vetos.

Richard R. Nelson details the activities of these and eleven other interested states in the January, 1982, issue of *Monthly Labor Review*, a publication of the Bureau of Labor Statistics, U.S. Department of Labor.

Only 10 percent of the nation's skilled construction workers are black. This low percentage is due primarily to Davis-Bacon. The Act must be repealed if the number of black construction workers is to be improved. If the Congress does not consider it appropriate to repeal Davis-Bacon outright, they should consider amending the Act to make it possible for states to gain exemption from it. Once done, the experiences of states opting out from under the Act's requirement will provide excellent proof of the negative effects of the Davis-Bacon Act on employment opportunity.

IV. *Summary*

Is it possible that black politicians have not been honest with their constituents? Congressional Black Caucus members always vote unanimously in favor of increases in the minimum wage and unanimously in opposition to repeal of the Davis-Bacon prevailing wage law. Some black mayors support local minimum wage rates higher than the national minimum, despite the severe disemployment effects. Apparently, this trend continues because workers who receive raises show their appreciation at re-election time while the young people who are robbed of the opportunity to get their first job are not likely even to vote.

If we are to improve employment opportunities for minorities and youth, Congress must act. Davis-Bacon must be repealed. The minimum wage must be repealed.

The Minimum Wage and the Davis-Bacon Act: Comment

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Mr. Keyes has written a paper with general conclusions with which I find little to disagree. The minimum wage provisions of the Fair Labor Standards Act and the Davis-Bacon Act confer monopoly benefits on one class of American citizens at the expense of another and more unfortuanate class of American citizens. Mr. Keyes addressed this issue very well. Although I find little fault with the general thrust of Mr. Keyes's paper, I can, however, suggest some things that could have made his paper more effective in delivering his message to a hostile political audience. After all, the politicians he is attempting to reach are not professional economists. Professional economists have already agreed upon the effects of the minimum wage law and its *super* minimum wage counterpart (the Davis-Bacon Act). For readers who are not professional economists, there is a relatively easy test for professional consensus on an idea. Check introductory textbooks. If you select at random any introductory economics textbook that says anything about the minimum wage law, it will say that it causes unemployment for some workers. Furthermore, most often these workers are less preferred in one sense or another. They may be less preferred by virtue of low skills, poor education, race, sex, age, or nationality. According to recently released Department of Labor Bureau of Labor Statistics data, nationally youth unemployment is 22 percent and black youth unemployment is 46 percent. These statistics give empirical confirmation to the hypothesis that Mr. Keyes makes in his paper aboout the minimum wage law.

Civil rights leaders, black politicians, and interventionists argue that those unemployment statistics are mere confirmation of racism in our society. Mr. Keyes, as I do, blames much of black unemployment on the minimum wage law. But since racism still exists in the United States, politicians are not going to be that convinced by all the complex statistical studies to which Mr. Keyes alludes. He should have made it simpler. One way is to point out that 25-year-old blacks have an unemployment rate less than one-half that of teenage blacks. Why? The standard racism hypothesis of black teenage unemployment would have us believe that black people change colors when they reach the age of 25 and those that do not remain on the unemployment roles. That is probably not true. What happens is that somehow these kids, along with more years, gain a little bit more education, maturity, and responsibility that they did not have earlier.

As a remedy to the employment problems of teenage youth, Mr. Keyes supports the Hatch-Nickles proposal. This proposal is the Youth Opportunity Wage Act. It provides for a subminimum of 75 percent of the adult rate for a 6-month period for workers under 20 years of age. I think that the Hatch-Nickles amendment is preferable to the status quo, but it is far inferior to outright abolition to the minimum wage law or the exemption of youths from its requirements. The Hatch-Nickles amendment has the effect of saying that if a kid can produce 75 percent of the adult minimum ($2.51 an hour), he is then eligible for job consideration. However, many youths, particularly the younger ones, do not have the skills to produce even $2.51 an hour worth of goods and services.

In discussing the Hatch-Nickles amendment, Mr. Keyes makes the statement that union workers or older workers will not be hurt by such an amendment. I disagree with Mr. Keyes on that. If this were not the case, he would be hard put to explain why union members, represented by their national leaders, are so strongly in opposition to the amendment. I believe that the amendment would constitute an encroachment on (and a foot in the door) already conferred monopoly privileges of organized labor. I believe that unions see it that way also.

The Davis-Bacon Act, as Mr. Keyes points out, produces unemployment effects similar to the minimum wage law. The Davis-Bacon Act has the effect of discriminating against the usage of nonunion labor on federal construction projects. To the extent that it discriminates against nonunion labor, it also discriminates against blacks. The reason is that most blacks in construction report no union affiliation. This kind of employment discrimination against blacks was at least a part of the original justification for the Davis-Bacon Act. In arguing in support for the Davis-Bacon Act in 1931, Congressman Allgood (D-Ala.) said, "That contractor has cheap colored labor that he transports, and he puts them in cabins and it is labor of that sort that is in competition with white labor throughout the country" (*Congressional Record,* 1931, p. 6513).

Despite the obvious racial *intent* and *effect,* I would have been interested in Mr. Keyes's explanation for the support given the Davis-Bacon Act by black congressmen. Could their support for the Davis-Bacon Act be a bargaining chip in order to get unions to support various welfare programs?

One point, ignored in Mr. Keyes's paper, that I thought should have been covered, is that the Davis-Bacon Act causes other problems. Take the issue of racial quotas. Many Americans find racial quotas in employment morally repugnant. However, such a position assumes that the economic game is being played fairly. Everyone has an equal chance. However, the game is not fair. If we are going to keep a law on the books, such as the Davis-Bacon Act which systematically discriminates against blacks in federal construction projects, what are we to do? Can we expect blacks to take this kind of exclusion lying down? Then the only sensible thing that we can do, if we are to keep the Davis-Bacon Act, is to have hard and fast racial quotas in employment on all projects covered by Davis-Bacon. This is the second best solution. However, I prefer the first best

solution: repeal of the Davis-Bacon Act and elimination of racial quotas in federally financed construction.

Finally, in future work Mr. Keyes might consider why people of good will politically support laws like the Davis-Bacon Act and minimum wages. I think that good hearted people support these laws because the beneficiaries are visible and the victims are invisible. That is, those thrown out of work by these laws are unseen by the do-gooders and, furthermore, the victims do not know why they cannot find a job.

The Minimum Wage and the Davis-Bacon Act: Comment

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The minimum wage is a curious beast that seems to have a life of its own. Although it has been the whipping boy of economists for years, it has remained an important plank in the platform of enthusiasts of income redistribution and spokesmen for the plight of the poor. As William Keyes has stated emphatically, standard theory and an accumulation of evidence show that wage floors reduce employment of people on the low side of the wage distribution. Since I agree with his fundamental points, I will confine my remarks to matters of emphasis and other specifics.

I, too, find the evidence persuasive that the changes in the Fair Labor Standards Act (FLSA) were a factor in the alarming increases in unemployment among black teenagers. But I fear that Keyes's discussion of the issue might lead the reader unfamiliar with the topic to expect more improvement than repeal of the FLSA would actually produce. A number of other developments have probably contributed heavily to the problem. Congress expanded the system of income maintenance and income redistribution radically in the late 1960's and the 1970's, and the changes in minimum wage legislation were only a part of that overhaul. The enlargement of the "social safety net" raised the implicit marginal tax rate faced by workers in low income households. There have also been declines in the quality of education in major-city school districts and increases in crime and divorce rates. I suspect all these developments have reduced the appeal of labor income to today's teenagers while lowering their attractiveness as potential employees. I also suspect these factors have affected a larger share of black teenagers than any other demographic group.

One might argue that all these developments are consequences of the same well-meaning but misguided social philosophy that inspired the FLSA, but attempting to undo the damage through repeal of minimum wage laws alone is likely to prove frustrating. This does not mean I recommend that minimum wages go unchallenged. I agree with Keyes that a frontal assault in Congress would be futile, but I differ with him on the best point at which to begin the counterattack.

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*The views expressed are those of the author and do not represent positions of the Federal Reserve System or the Federal Reserve Bank of Dallas.

An amendment that would have placed the minimum wage for workers under 18 at 85 percent of the adult minimum for the first six months of their employment narrowly failed to pass in the House of Representatives in 1977. Keyes argues that this "youth differential" should be sought again. I think adoption of such a differential would be a poor idea. Nearly two-thirds of those working for the minimum wage are adults, and probably half or more of the employed teenagers earn more than the minimum wage (Welch, 1978; Welch and Cunningham, 1978). A youth differential is likely to hurt many adults while helping only a few teenagers. I doubt many would find that tradeoff acceptable.

I would prefer to see the minimum wage phased out in the same way it was brought in — by changing coverage. The early legislation covered few firms in the retail trade and service industries, where many of the low-wage jobs are found. The amendments of the sixties and seventies expanded coverage in those industries. Since the increases in the nominal minimum wage itself have merely kept up with wage growth in the economy overall, the extensions of coverage have produced nearly all the effects of the amendments on employment and earnings of low-wage workers. Retractions of coverage would relieve some of the strain in the teenage labor market while expanding opportunities for adults as well.

Keyes also argues for repeal of the Davis-Bacon Act. Here, again, I sympathize with his disapproval of attempts to legislate improvement on the outcome generated by a competitive market, and I agree that the act reduces employment of minorities in construction. But I suspect the effects are confined primarily to adults. Construction is a high-wage industry that has never been a major employer of teens, so the direct effect of Davis-Bacon on teenage employment is not likely to be large.

Construction employs about 15 percent of the labor force's adult males without high school degrees. Employment of high school dropouts in construction might be even higher if the law did not require premium wages on federal projects. Minorities are hurt by the substitution toward highly skilled labor, for minorities are more heavily concentrated among the less skilled. (Blacks account for 17 percent of the adult males in the labor force without degrees.)[1] In addition, the high wage floor produces an excess supply of labor, so jobs must be rationed. This allows contractors to indulge their preferences with regard to attributes not related to productivity and protects those who discriminate on the basis of race.

Davis-Bacon may have some important indirect effects on youth employment. To the extent that minority adults are crowded out of federal construction projects, resources available for the education of minority youth are diminished. The crowding out may also affect the way minority youth perceive the chances of ultimately finding work as adults in the economy's more accessible high-wage sec-

[1]The figures on workers who have not completed high school are from my own analysis of computer tapes recording the information gathered in the Current Population Survey from March 1980.

tors and, thereby, contribute to discouragement with the world of conventional work. I would not argue that this alone weighs heavily on the decisions of many, but such small deterrents add up. Nevertheless, the major objections to Davis-Bacon are its effects on construction costs and the market for adult labor, not its impact on youth employment.

But my disagreements with Keyes on FLSA and Davis-Bacon are not serious from the policymaker's perspective. The consequences of a badly needed change are often overstated by the proponents of that change to emphasize the importance they attach to it. If my guess that Keyes has employed such a tactic here is correct, his position and mine are very close indeed. The FLSA and Davis-Bacon are both outmoded pieces of legislation that should be repealed.

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Government Programs for Public Sector Employment

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Some legislative programs have exacerbated high unemployment among minorities and teenagers, and it makes no difference whether the motives for these policies are good or bad, for the effects are still the same — reduced employment opportunities for those at the bottom of the economic ladder. This is obvious in the minimum wage laws, the Davis-Bacon Act, and such things as occupational licensure where the industry itself, in concert with government protection, determines who will get coveted jobs. As Walter Williams pointed out in *Youth and Minority Unemployment,* published by the Hoover Institution of Stanford University in 1977, and *The Fairmont Papers,* Institute for Contemporary Studies, 1981, one example of artificial legal restrictions against market entry of blacks is in the operation of taxi cabs. In New York City, to own and operate a taxi one must buy a license, called a medallion, which costs $68,000. In Chicago, a similar license costs $40,000; in Boston, $50,000 and in Philadelphia, $35,000. Out of 600 taxis in Philadelphia, only 11 are owned by blacks. On the other hand, in Washington, D.C., 80 percent of the taxis are owned by blacks, where the license costs less than $100. The high costs of licenses in New York, Boston, Chicago, and Philadelphia do nothing to enhance the quality of service or the safety of passengers. One can only conclude that they are blatant and successful attempts to limit access to these markets. As long as we have these licensing practices, blacks will be disproportionately affected.

Another factor in the high unemployment of youth and minorities is the role of labor unions. Wherever unions have acted as a monopoly in the hiring of labor, minorities — primarily blacks — have not fared well. This is especially true in the crafts and construction trades. An excellent analysis of this is done in *The Negro Wage-Earner and Apprenticeship Training Programs — A Critical Analysis With Recommendations* put out by the Labor Department of the NAACP in February of 1960. I would also refer you to "Racism and Organized Labor" by Herbert Hill, Labor Director of the NAACP, in the February 8, 1971, issue of *New School Bulletin,* and *A National Disgrace: What Unions Do to Blacks* by Jack Star, *Look* Senior Editor, in the November 12, 1968, issue of that magazine. All three studies, and many others, have systematically detailed the union practice of blocking black admittance to the skilled trades. In Herbert Hill's words, labor "could have been a force helping to liberate the American Negro — instead, most unions have become instruments of racial oppression." However, these analyses

of the problem are blind to a major solution — a free and open labor market through right-to-work laws. These laws permit a person to have a job without joining a union. Department of Commerce statistics consistently show that the 20 states that have right-to-work laws have unemployment rates lower than the national average. Furthermore, blacks and other minorities in these states experience lower unemployment than their counterparts in the other 30 states. Senator S. I. Hayakawa sums it up succinctly in the Preface to *Black America and Organized Labor: A Fair Deal,* published by the Lincoln Institute (p. 3), "It is only by eliminating this element of compulsion, by providing real freedom of choice to workers with regard to whether or not they wish to join a labor union, that black workers will be given an equal opportunity to advance."

However, it has become a tenet of American Liberalism that when a small amount of government interference in the economy doesn't produce the desired results, the answer is always more government interference, moving us further and further into the morass of a government-controlled economy. The results have invariably been increased public sector employment and federal mandates for lower unemployment rates. Tangible evidence of this policy was the Full Employment and Balanced Growth Act (Humphrey-Hawkins), first introduced in 1976. The late Senator Hubert Humphrey, co-author of the original bill, noting in 1976 the devastating effect of recession on black Americans, declared that "the civil rights movement has shifted from the political arena to the economic arena." He further stated that every American has the "right" to a decent job at decent wages and that if the private economy cannot supply these jobs, then the federal government should do so; i.e., the government should be the employer of last resort. The bill had the following provisions: (1) would require the federal government to use various social and economic programs to reduce unemployment from the 1976 figure of 7.5 percent to 3 percent in 4 years; (2) mandate that the federal government be the employer of last resort by setting up "reservoirs of federally operated public employment projects"; (3) set up an "alternative source of capital funds for local and state governments to finance public facilities"; (4) make full use of presidential powers that would make the creation of full employment the nation's first priority including powers that would not be limited to the use of the federal budget, monetary policies, tax policies, the power to dictate policy to the Federal Reserve Board, and the power to raise or lower interest rates; (5) require that the President submit an annual report to Congress that would set annual quotas in areas such as employment, production, and purchasing power in order to reach full employment to "reorder national priorities," exempting certain areas of the budget from future cuts if they fell within the national job plan; and (6) furthermore, he would create an "Advisory Committee on Full Employment and Balanced Growth," the "Full Employment Office," and the "Division of Full Employment and Balanced Growth" to implement the policies of the bill.

The Humphrey-Hawkins bill is based on the notion that private sector economic expansion can be stimulated through increased government expen-

ditures and money creation. This follows from the belief that when the newly employed government workers receive wages, their resulting new spending creates new private sector jobs as the new money "ripples" through the economy. The result, therefore, in addition to jobs created directly, is a new, higher level of overall economic activity. However, this fails to take into account the fact that the jobs directly created must be paid for either through new direct taxes on existing economic activity or through the indirect tax of money creation and the inflation which must surely result. Unfortunately, this is the kind of one dimensional analysis that dominates most of our textbooks on macroeconomics.

The original (and stronger) version of the bill would have made any adult unemployment rate greater than 3 percent "illegal" and would have required the President to use federal programs of public works and public service jobs to achieve the 3 percent objective within specified time limits. In the final version, however, the timetable was lengthened and a new overall unemployment target (including persons aged sixteen and over) was added. Second, the final version permits the President, with the approval of Congress, to modify the goals and/or timetables. Third, the President is given more latitude in choosing the means to achieve the goals of the bill, in lieu of the controversial mandatory public works provision in the original version. In the opinion of many people, both supporters and opponents, these and other changes represented a significant watering down of the proposal which, in any case, apparently aided in its final passage.

The primary mistake is in making unemployment the policy objective in the first place. The real objective should be production, the creation of wealth, and productivity, finding ways to produce more with less. Employment is simply the means. As Henry Hazlitt aptly points out in his *Economics in One Lesson,* this distinction is by no means trivial. Having increased employment as the objective invites "solutions" which clearly diminish the quality of life. We could begin by outlawing all labor-saving devices, followed by various spread-the-work schemes. Then the government could put people to work digging holes and refilling them or building walls and tearing them down. As ridiculous as they might sound, all of these things have been tried in varying degrees. On the other hand, with production (properly defined) as the objective, the worthlessness of these schemes becomes apparent. Work is production only to the extent that one is producing a good or service that someone else is willing to buy. "Willing" is a key word in this definition. Specifically excluded are coerced purchases by others, such as taxpayers, being forced to pay for a government-funded limestone pyramid in Needmore, Indiana (an actual example), oversized automobiles subsidized by government loan guarantees, government farm price support subsidies, and questionable public works projects.

One objection to the bill was that it would be inflationary, especially if the final version had included the controversial public works provision, which would have required the government to establish reservoirs of public employment whenever the rate of unemployment exceeded the stated target. Supporters attacked this objection as being merely the reflection of a continued belief in the

discredited "trade-off"; i.e., that the main cause of inflation is a low rate of unemployment, or that one must be used to right the other. The supporters also cited empirical evidence that this "trade-off" is invalid and argued correctly that the "trade-off" would be indefensible even if it worked. The ironic thing is that people on both sides of this issue have claimed for years that they no longer believe in the "trade-off," but their debate on numerous economic issues continues to reflect exactly the opposite. The debate on Humphrey-Hawkins, alas, was no exception.

Humphrey-Hawkins opponents, realizing that blocking the passage of the bill in some form would be a near impossibility, sought to weaken it by adding a specific low target level for the rate of inflation in the hope that it would frustrate the process of actually using the public works provision. The supporters fought vigorously against this addition, even though they had claimed earlier, in arguing against the "trade-off," that H-H would actually help to bring inflation down. The opponents also fought successfully to eliminate, or at least modify, the public works provision of the bill such that the President could, but was no longer compelled to, use programs of public employment as a weapon against unemployment. Still, the former battle over inflation/unemployment targets continued between the "non-believers" in the "trade-off." A notable exception to this was a rather novel approach taken by Congressman Jack Kemp, who sought unsuccessfully to replace the public works provision with a tax-cut provision, which would have mandated cuts in marginal income tax rates on businesses and individuals whenever the unemployment rate exceeded the desired target. This was apparently based on the attractive idea that inflation can be fought with higher employment, provided the incremental employment occurs in the private sector as a result of increased profit incentives.

The fact that government jobs programs do not accomplish the intended objective is relatively innocuous when compared to their definite harmful effects. First of all, they require a transfer of real economic resources from other sectors of the private economy to the building and construction trades, with dubious (or negative) benefits in return. Furthermore, black Americans and other minorities have always had, and continue to have, enormous difficulties gaining entry into these trades in any meaningful way. This results primarily from the myriad of restrictive licensing, pricing, and membership policies which labor unions, usually with government backing, have effectively used as instruments of discrimination against them. Using public funds in this manner, therefore, effectively forces taxpayers, including black taxpayers, to subsidize these discriminatory practices.

But the supporters of the bill, determined to have something in it for everybody, did not forget to throw a bone, bare though it may be, to the poor, underprivileged, unskilled, and un-unionized in the form of "the expansion of CETA and other existing employment and training projects and such new programs as are determined by the President to be needed." It is further stipulated

that jobs under the new programs "shall be mainly in the lower ranges of skills, so as to maximize the number of jobs created."

No one can reasonably argue against the need for job training for the unskilled, and I am sure that such legislation is often well intended. Although there have been widespread reports of impropriety and misappropriation of funds in connection with CETA and such programs, my primary objection to them is much more fundamental. Job training is an economic activity much like the production of almost any other good or service in that it is best encouraged through private sector profit incentives. The profit incentive not only promotes training but also causes the training to focus on those skills which are in relatively scarce supply.

Many private firms have had such training programs for years. The absence in government programs of such incentives and the lack of any real accountability practically assure their failure. The result is that people are poorly trained, if at all, or they are trained in skills which may not be in demand.

The sad thing about CETA is that young people are paid to do essentially nothing, under the guise of training, while the federal government pays their middle class supervisors to oversee their non-training. The end result, in a few short years, will be a group of frustrated, unskilled adults, most of whom will probably need some sort of federal assistance to subsist for the rest of their lives because labor unions and private employers will have "legitimate" cause for denying them entry into any meaningful employment. Also, while the stated purpose of having jobs under these programs which focus on the lower ranges of skills is to maximize the number of jobs so created, such a restriction has the effect of assuring minimum competition with members of labor unions by program participants, both now and in the future.

In order to appreciate the full impact of such programs as CETA, it is helpful to note that it is a continuation of an onslaught against youngsters which begins with the minimum wage.

The minimum wage law effectively prohibits work for hire by anyone whose labor is worth less than the minimum wage, thereby contributing to teenage idleness and unemployment. When this is coupled with programs such as CETA, we are setting the stage for a number of youths, primarily blacks and other minorities, to eventually reach age twenty having never worked at all.

The most serious effect of countercyclical jobs programs arises from the fact that they require the confiscatory transfer of economic resources from the private economy at the very time that the economy is least able to bear the burden. This obviously cannot be done without stifling some other economic activity. Therefore, the provision for countercyclical programs of public employment would actually aggravate the very contraction that it is intended to offset, by destroying at least one job in the private sector for every public job directly "created." This occurs regardless of the source of funding, whether through

government borrowing (future taxes), money creation (inflation tax), or new direct taxes on existing private sector production. Either tax simply makes all private economic transactions less profitable, and the economy contracts further in response.

Economic contraction always necessarily pits groups and individuals against each other as they compete for shares of a shrinking pool of resources, thereby substantially eroding prior social progress. Even racial discrimination, albeit in more clever and subtle forms, rears its ugly head again. As new unemployment results, the poor and powerless will naturally bear a disproportionate share, since they are still the last hired and the first fired. However, when this occurs, H-H supporters, rather than recognizing the error of their ways, will surely conclude that not enough of their "stimulus" was applied, and new and more massive schemes of income redistribution will result. This sets the stage for a downward economic spiral which we can very well do without, especially the poor, the powerless, and the non-unionized.

For those who take comfort in the belief that the bill was substantially watered down before it became law, it would be wise to assume that a President and Congress who believed that such a law was necessary in the first place would very likely feel compelled by the law to implement its provisions. The bill mandates that "the President and the Congress shall exert every available effort, including use of the tools provided in the bill," to accomplish the unemployment targets. Therefore, whatever erroneous ideas the President and the Congress might have regarding economic policy would have the full force of law, once the unemployment targets are exceeded. Challenges to such initiatives would ultimately have to be settled in the courts, thereby effectively placing economic policymaking in the hands of the judiciary. The problem here is that the President and the Congress are attempting to legislate the result before establishing the proper methods of achieving that result. It is analogous to — and no more effective than — outlawing headaches for persons who have brain tumors.

We will continue to have economic contraction so long as we believe in the discredited "trickle-down theory," which holds that if you spread government money around eventually it will seep down and create jobs. And as long as we have people whose job is to spread money, we shouldn't be surprised when they spread it.

The only people who benefit from these federal government job programs are the middle to upper-middle class bureaucrats who administer these programs and well-connected contractors. These GS-12s, 13s, and 14s would be idled if we actually conquered poverty and created real private sector jobs. Hence, they have a real incentive to create more jobs programs but not more jobs.

As for ways to create jobs for those who are presently in public sector "make-work" employment, offhand I can think of a few.

1. *Capital creation* — Jobs cannot be created without the capital needed for raw materials, tools, plants, machinery, etc. I would accelerate President

Reagan's tax cut program. Furthermore, I would repeal the capital gains tax and the corporate income tax. Neither Japan nor our Western European allies have these taxes, and their growth rate is higher than ours.

2. *Minimum wage* — Either repeal it, which is the best thing, or create a subminimum wage to enable young people to get their first jobs. If a young person can only produce $2.00 worth of goods per hour but the minimum wage is $3.35, no amount of wishing and hoping will get a businessman to hire him at a loss.

3. *Right-to-work* — Repeal of the Wagner Act and all other federal labor laws which require membership in a union to keep a job, and repeal all laws which mandate that unions be the sole bargaining agent for workers.

4. *Licensing requirements* — Repeal of those laws, federal, state, and local, which artificially restrict entry into any profession or trade and permit the industry itself to determine who gets a job.

It is my belief that the greatest obstacle to jobs among the public in general, and minorities and youth in particular, is government itself. Remove the governmental restrictions and jobs will follow. Milton Friedman, in his book *Free to Choose*, illustrates this point thoroughly with his description of the free market in Hong Kong.

I believe that these changes would help to alleviate unemployment among minorities and youth and pave the way for economic growth that would permanently lift great numbers of Americans out of generational poverty.

Government Programs for Public Sector Employment: Comment

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Since I have no substantive disagreements with many of the points made by Wendell Gunn, I will elaborate on a statement made by him. Specifically, Gunn states that "if one looks at the provisions of Humphrey-Hawkins you will see that its outstanding characteristic is the notion that federal government programs and spending will somehow solve unemployment." This is indeed the case, and is largely the legacy of Keynesian economics as espoused and implemented in the 1960s and 1970s. Fortunately, however, reality has finally caught up with this brand of economics. Today it is no longer widely believed that activist government intervention into the marketplace is the key to a healthy economy.

This brings me to the two major points that I would like to make. One point pertains to market failure, while the other pertains to equity considerations. First, as regards market failure, a widely held view is that when markets fail government involvement is certainly appropriate. However, this view requires that all government programs be justified on the basis of an identified failure in the marketplace. Unfortunately, this eminently sensible screening device appears to be seldom used. Otherwise, it is difficult to believe that the skyrocketing growth in federal spending that we have witnessed during the past fifteen years or so would have occurred. Nor is it likely that minimum wages, right-to-work laws, and the extensive licensing requirements that are discussed by Gunn and that are so prevalent today would have been enacted.

Perhaps a specific example will illustrate the importance of my point. It was long believed, according to Keynesian doctrine, that business cycles were a sign that labor markets were failing to operate properly. To deal with such a situation, the proposed remedy was for the federal government to pursue activist stabilization policies. These policies generally included spending and tax subsidies targeted at specific labor groups as well as changes in the growth rate of the money stock with the aim of bringing relief to interest-sensitive sectors of the economy. A consensus is emerging, however, that in a world of uncertainty the traditional view justifying the need for government efforts to stabilize employment and output is grossly exaggerated, if not just plainly incorrect. The reason is that the presence of uncertainty usually requires that people form expectations, including expectations about government spending, taxes, and the rate of growth

in the money stock. This means that one must carefully distinguish between temporary and permanent changes in federal programs as well as between expected and unexpected movements in money, for people are going to react differently to these different types of changes in policy variables. Temporary increases in government spending, for example, may temporarily induce people to supply more labor now. When spending is temporarily below its long-run trend, on the other hand, people may temporarily decrease their supply of labor. Such temporary changes in government spending are clearly capable of contributing to business cycles, but these fluctuations are not a sign of market failure. Similarly, unexpected movements in the growth rate of money may add noise to prices and thus create a signal extraction problem. This, in turn, may give rise to movements in actual real wages that differ from expected movements. These expectational errors, in other words, may induce variations in labor supply and, thus, output. Cyclical fluctuations in employment and output in a world of uncertainty are thus not convincing evidence that there is a failure in the labor market and that activist government policies are needed. This point, although not developed, appears to be recognized by Gunn when he states that "at this time the Congress and others are using the unemployment rate as a pretext for more government job programs without revealing that many of those are without a job by their own choice."

Furthermore, even if there are cases of market failure, the appropriate governmental reaction may be to provide more information to market participants and to adopt and adhere to stable rules. In this way, expectational errors and uncertainty about government actions may be reduced so that economic markets may operate more efficiently and cyclical swings in employment and output may be reduced.

Another concern that I have about the involvement of the government in labor and other markets is the frequency with which individuals advocating such activity overlook the budget constraint. In other words, if collective government spending on labor programs is increased or tax subsidies are provided, the federal deficit will increase. This means that unless other spending is reduced and/or taxes raised (thereby generating possible adverse disincentive effects), the deficit must be financed by selling off government assets and/or selling treasury bonds to the public and/or to the Federal Reserve. The selling of bonds to the public, however, may drive up real rates of interest and thereby crowd out private interest-sensitive spending, including spending on productive plant and equipment. Selling bonds to the Federal Reserve, or monetizing the deficit, on the other hand, will only contribute to inflation and, thus, higher nominal rates of interest. In short, increased spending for labor programs or costly regulatory programs as well as lost revenue due to tax subsidies or lower profits associated with a heavier regulatory burden may have, through the government budget constraint, adverse implications for inflation and/or productivity.

My second major point concerns the issue of equity. If government programs for public employment are simply meant to redistribute income, then those

advocating such programs should say so. Unfortunately, if redistribution of income is the sole or primary factor underlying many of these programs, one would suspect that there must be more cost-effective ways to achieve such a result. In any event, the distribution of income issue is largely, if not entirely, a political rather than an economic matter.

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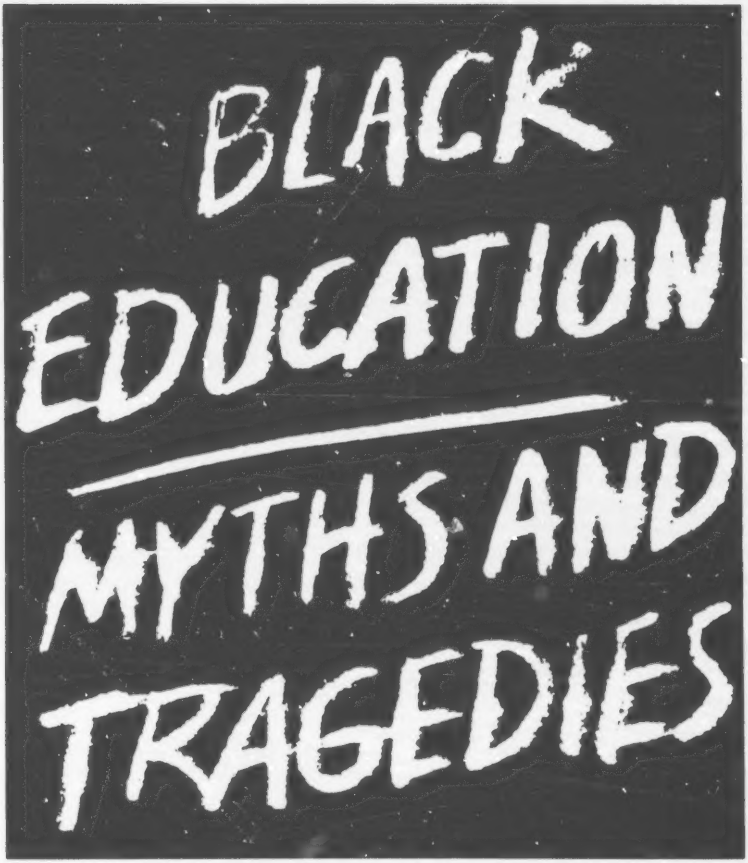

by Thomas Sowell

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Government Programs for Public Sector Employment: Comment

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Economic logic, common sense, and empirical economic research provide answers to the minority and youth unemployment problem. Causes of minority and youth unemployment such as occupational licensing, the various exclusionary practices of labor unions, the minimum wage law, and low rates of economic growth are well-known and aptly described by Wendell Gunn. The problem of minority and youth unemployment is not an economic problem, however, but a political problem. We know how to restructure our institutions in a way that would lead to increased employment opportunities, but lack the political will to do so.[1] The reason is that government-sanctioned constraints on the employment opportunities of minorities and youth dispense benefits to concentrated, well-organized, and well-financed interest groups, such as labor unions, which compete with minorities and youth in the labor market, while dispersing the costs among larger, less organized groups, i.e., teenagers and minorities. The relevant issue is how to repeal these constraints, but we find ourselves, unfortunately, in what Tullock (1975) called "the transitional gains trap." The general public — especially minorities and youth — would be better off if all such restrictions were abolished, but their elimination would impose a loss on those who now benefit from them. Labor unions and the other advocates of the minimum wage and licensing laws would (and do) lobby intensely against such actions. By contrast, the general public has no effective lobbying group and the biggest losers in this situation — minorities and youth — are among the least politically active citizens. Thus, the repeal of these restrictions would be difficult to achieve, at best.

Is there any way out of this trap? The dissemination of information regarding the actual effects of licensing, the minimum wage law, etc., may be influential in leading to deregulation. While one should be careful not to ascribe too much importance to the role of economists and economics in shaping public policy, there does appear to be some evidence of this. For example, the partial deregulation of the airline and trucking industries has come about at least in part because

[1]Similarly, we have known for thousands of years that inflation is caused by monetary growth which exceeds the growth of real GNP but are, at times, seemingly unwilling to do anything about it other than blame it on capitalists, unionists, farmers, and Arabs.

of the vast body of economic research which may have increased public (voter) awareness that the effect of this regulation was to grant special priveleges to airlines, trucking firms, and the Teamsters union at the expense of the general public. In this case, voters became aware of the costs imposed upon them by the airline and trucking cartels, and persuaded even such "liberals" as Senator Kennedy to promote deregulation. Evidently, Kennedy and his colleagues decided that the political support gained by reducing the special privileges outweighed the reduced support from the airlines, trucking firms, and the Teamsters union which, by the way, endorsed Ronald Reagan in the 1980 presidential election.

In essence, perhaps the best we can hope for is that politicians can be embarrassed into refraining from imposing further restrictions on the employment opportunities of minorities and youth. Furthermore, the following advice of economist Roland McKean (1971, p.185) seems particularly appropriate.

> . . . it is clear that unless the information affects numerous voters' views, the words of advisory groups cannot be expected to affect officials' . . . decisions greatly or persistently. If new . . . information does alter voters' feelings, legislators and hence government personnel can capture gains from modifying their behavior. If changes in the voters' positions persist, government personnel have claims to rewards (e.g. votes . . ., budget increments, promotions, approval) from new policy changes that have truly been affected by the . . . information and advice.

McKean was addressing the issue of the use of benefit-cost techniques in governmental decision-making, but his advice would appear to apply to the issue at hand as well. In so far as economists and others can have any effect on public policy regarding minority and youth unemployment by generating information, it is essential that the information be conveyed to the voters — especially minority voters. Politicans will not improve minority and youth employment opportunities unless such actions result in a net gain in political support, regardless of how high the teenage unemployment rate becomes. The necessary political support will not be forthcoming unless the popular myths regarding the activities of labor unions, occupational licensing, and the minimum wage law can be dispelled to the minority community and to the general public. This appears to be a formidable task, for labor unions and other interests are already well-organized and well-financed in their efforts to perpetuate such myths. Two recent examples come to mind. First, the city of Washington, D.C., held a tuition tax credit referendum in the Fall of 1981. The tax credit is aimed at providing lower and middle-income parents with a wider range of educational choice for their children. In response to this initiative, public employee union members in that city were given time off from their normal duties to campaign against the tax credit. The city government financed an anti-tax credit advertising campaign, teachers distributed tax credit "fact sheets," which were of questionable legitimacy, in their classrooms, and so on. The tax credit referendum failed.

More recently, Chicago teachers' unions have waged a campaign against Marva Collins, the private school teacher (and administrator) who teaches

children from Chicago ghettos. The teachers' unions have claimed on national television[2] that Marva Collins is a fraud, despite the testimony of dozens of satisfied parents that she has helped their children immensely. Similar campaigns are waged whenever deregulation of labor relations is mentioned around Washington, and the National Education Association has recently raised vast sums to help 200 trained campaign workers to oppose candidates in 150 Congressional races this Fall who advocate such "anti-education" policies as tuition tax credits and reductions in the budget of the Department of Education.[3]

Other notions that must be dispelled, despite these roadblocks, are the myths of the free lunch and the benevolent despot. As Wendell Gunn pointed out, public employment programs have not been successful because they do not increase aggregate employment, but merely alter the composition of the labor force by transferring jobs from the private to the public sector. This is no mystery; the notion of opportunity cost is at least as old as the *Wealth of Nations* which was published in 1776. Nevertheless, we continue to hear pleas from "intellectuals," including some economists, and from the Congress to enact legislation such as the Humphrey-Hawkins bill which could not possibly lead to a reduction in unemployment. To many, the problem here is simply one of avoidable ignorance; if policymakers were better-educated or were given better information, such mistakes would be avoided, so it is said. This is part of the conventional view of public policy — that policymakers are assumed to be beneficient, omnipotent, and all but omniscient, lacking only specialized knowledge that only "policy analysts" can give them, and that policy failures can be explained as a series of avoidable mistakes.[4] By contrast, if one assumes that politicians are human beings, and that no divine transformation takes place when individuals move from the private to the public sector, it is clear that government jobs programs, the minimum wage, occupational restrictions, and the economic stagnation of the private sector persist because they all contribute to the power, prestige, and reelection opportunities of federal politicans, and should therefore be expected. They are the direct result of the consistent, rational, utility-maximizing behavior of politicians. After all, why should we expect politicians to act so as to increase private sector employment, when they can increase public employment instead, along with all the patronage opportunities the latter entails? Politicians have little to gain by allowing a stable, efficient, and growing economy.

In sum, the problem of minority and youth unemployment is a political problem that will not be improved significantly until politicians are either given the incentives to do so, or are prohibited from having anything at all to do with "economic fine-tuning" and regulation of labor markets. The former alternative

[2]The Phil Donahue Show devoted three episodes to this issue.

[3]*Newsweek*, March 29, 1981, p. 17.

[4]For a detailed account of this view, see (Niskanen, 1971) or (Tullock, 1965).

requires that substantial resources be spent to counteract the numerous myths which still prevail. Much of the minority community, and the general public as well, is "rationally ignorant" of the advantages of economic growth over government growth. The latter alternative requires taking the advice of H. L. Mencken (1955, pp.169-76) who once said that "better government" could not be had by "throwing the rascals out" (at election time) and bringing another ("better") group of rascals in, but rather by throwing them out and keeping them out.

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Minorities, Youth, and Education*

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I. *Introduction*

Over the past twenty years the United States has made extraordinary developments in science and technology. As a country, we have advanced into the space age, the age of sophisticated computers, telecommunications, and electronics. These years have provided us with unparalleled discoveries in molecular biology with vital applications in the sciences of energy and the environment. Yet, educational statistics indicate that the youth of this country are not being prepared to function in such a sophisticated society. Nowhere is this more apparent than among the country's minority youth. A study recently released by the Department of Agriculture found that in 1979 only 35.5 percent of rural and 43.5 percent of urban Hispanic males over 25 years of age had completed high school. These figures compare with 63.4 percent and 73.9 percent respectively for rural and urban white males over 25 years of age.[1] Not only do the percentages of minority youth being educated suggest inadequacy, but so do qualitative assessments of the education minorities are receiving. A recent article on the results of a Defense Department survey reported that blacks scored "24 percent on tests of 'developed ability' " in math and reading "compared to a score of 56 percent for whites."[2]

While we cannot say with certainty that past and present educational policies were the cause of the educational decline for minority youth, we know that the policies did little, if anything, to combat the problem. In the years to come it will be imperative that we examine the education provided minority youth and attempt to formulate policies and practices which address the present problems.

Though the existence of the problem can hardly be debated, its causes can be and have been debated. The explanations range from too little emphasis on basic skills to the age-old claim that minorities possess a limited capacity for understanding academic subjects. In order to understand and explain fully the current condition of minority education we must examine the history of education; social/educational institutions, such as integration and bilingual education; and

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*The author gratefully acknowledges the invaluable assistance of Anita F. Hill.

[1] *Education Daily*, "Many Rural Hispanics Lack Formal Schooling, Study Finds," September 23, 1981.

[2] *The Washington Post*, "Blacks Score Lower in Pentagon Testing," February 20, 1982.

policies that attempted to promote educational equality for minority youth. This paper examines each of the foregoing and attempts to show how, in the move toward educational equality for minorities, promotion of academic achievement has been neglected. Finally, some guidance and suggestions for addressing the issues in the area of minority education are offered.

II. *The History of Education in the United States*

Early American Education. Until the early 20th century, formal education beyond the elementary school level was virtually nonexistent, with the exception of a few members of an elite upper class. In 1900, only 6 percent of the 17 year olds were high school graduates as compared with 61 percent in 1961.[3] The Italian, Asian, Russian, and Jewish immigrants of mid-19th and early 20th centuries, the minorities of that day, were generally less educated than the early 19th century immigrants. For reasons of financial survival and, in some cases, social upbringing many of the latter groups were not disposed toward formal education. Each immigrant group went through a phase in which it scored well below the norm on intelligence tests and rated low in scholastic endeavors. Each group completed this phase and was mainstreamed into the greater society, its intelligence test scores and economic conditions rising correspondingly. The process of educating and assimilating the early 20th century immigrant minorities continued until, today, they are either academically, socially, or culturally indistinguishable from their predecessors.[4]

Asian immigration into the United States peaked in the late 19th century. Most Chinese and Japanese immigrants settled in the Western part of the country. The Chinese, typically known for their willingness to do work that most other Americans refused to do, suffered intense prejudice, including harsh laws specifically aimed at limiting their numbers and chances of advancing in this country. Though the Chinese have numerous notable educational advances, the average Chinese American today is less educated than the average white American.

Japanese immigrants were quite different from the Chinese and early European immigrants. Those individuals who were allowed to immigrate into this country from Japan were an elite group, selected for their potential to advance. They were nearly all literate and put a great deal of emphasis on writing and reading. The events surrounding World War II had devastating effects on the Japanese. Yet, even during the internment period so much emphasis was put on education that from 1940 throughout the next decade and continuing to

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[3]Andreas M. Kazamias and Byron G. Massiales, *Tradition and Change in Education: A Comparative Study* (Englewood Cliffs, N.J.: Prentice Hall, 1965), p. 41.

[4]Thomas Sowell, *Ethnic America* (New York: Basic Books, Inc., 1981).

the present, the average Japanese American has been more educated than the average white.[5]

As we enter the 1980's we see that certain ethnic minorities have not completed the economic and educational cycle that early immigrants completed. Though no one theory satisfactorily indicates why it is so, it is generally recognized that blacks and Hispanos as groups have not reached economic and educational parity with the larger society. For a great many blacks and Hispanos, particularly those in this country's inner cities, quality education is not readily available. Under these conditions, asking for academic excellence and economic success from these students is asking the impossible.[6]

Hispanic American Education. Persons of Spanish origin were among the first ethnic groups to migrate into the United States in large numbers. In the 1920's the social revolution in Mexico and the agricultural development of the southwest United States contributed to the influx of Mexican immigrants. Stimulated by the economic conditions of Puerto Rico and Central and South Americas, individuals from these regions began migrating to the United States in large numbers between 1920 and 1973. According to the 1980 Census, Spanish origin persons in this country number 14,605,883.[7]

As late as 1967-68 the United States Commission on Civil Rights found that per pupil expenditures in predominantly Mexican American school districts were well below those in predominantly white school districts, as were the qualifications of teachers instructing in the Mexican American schools.[8] One of the salient features of early Hispanic education in America was the general failure of the public school system to recognize the significance of language and cultural differences of Hispanos in education. In a few school systems some attempts were made to understand the handicap under which students operated when educated in a language they did not understand. For example, in 1923 public schools in Tuscon, Arizona, taught classes in the native language of non-English speaking children; the Burbank, California, school system established a program in 1931 to build Mexican American childrens' English speaking ability; and in 1929 Mexican American children helped develop curriculum materials for the San Antonio

[5] *Id.* See, also, Thomas Sowell, *Race and Economics* (New York: David McKay Company, Inc., 1975), and Stephen Steinberg, *The Ethnic Myth* (New York: Atheneum, 1981).

[6] U.S. Commission on Civil Rights, *A Better Chance to Learn: Bilingual-Bicultural Education* Clearinghouse Publication 51, 1975.

[7] U.S. Department of Commerce, Bureau of Census, "Age, Sex, Race, and Spanish Origin of the Population by Regions, Divisions, and States: 1980". (1980 Census of Population, PC8051-1, Washington, D.C., U.S. Government Printing Office, 1981).

[8] U.S. Commission on Civil Rights, *With All Deliberate Speed: 1954-19??.* Clearinghouse Publication 69, Washington, D.C., 1981.

school system.[9] However, despite congressional enactment and agency regulations, it was not until the Supreme Court entered a decision in *Lau v. Nichols,* 414 U.S. 563 (1974), that instruction in the language understood by the child was accepted as a matter of right.

The legal basis for that decision will be discussed later in this paper. The Supreme Court's decision in *Lau* has come to represent the right of children who speak little or no English to a bilingual/bicultural education. It has been most narrowly defined as instruction using the native language and culture as a basis for learning subjects until second language skills have been developed. Some proponents would have it take on a broader mission. In the 8 years since *Lau* was decided educators have disagreed both over how to implement bilingual/bicultural education and its effectiveness in educating language minority students. One of the chief concerns is what some see as a conflict between providing education to the student in a cognizable form and assuring that the student develops sufficient English skills to perform in the greater society.[10] The historical lack of financial support for Hispanic education and the failure of educational curriculum and materials to represent the language and culture of Hispanos have no doubt adversely affected Hispanic education. It is still too early to know precisely what that effect is.

Black American Education. As with most other Americans, education of black Americans was reserved primarily for the most privileged. Most slave states had laws forbidding the teaching of reading and writing to slaves. Those who helped to educate slaves had to do so under secretive conditions, thereby limiting the number of slaves who could be made aware of the availability of educational opportunities.[11] This condition continued even after manumission in much of the early Reconstruction South. Though a few slaves managed to educate themselves under these conditions, educated blacks were generally free blacks, some of whom were sent abroad for formal training.[12] It is thus not surprising that cities like Atlanta, Baltimore, and New Orleans, with relatively high numbers of free blacks during the slavery era, were the cities of the first academies and colleges for black persons. Even today those areas boast concentrations of black academic institutions.[13]

During the post Civil War period there emerged a greater acceptance of the idea of education for black people. This notion was not, however, universally

[9]U.S. Commission on Civil Rights, *Bilingual-Bicultural Education. Supra,* n. 52.

[10]*Id.*, p. 3.

[11]Carter G. Woodson, *The Education of the Negro Prior to 1861* (New York: Arno Press and The New York Times, 1968).

[12]*Id.*

[13]Thomas Sowell, *Patterns of Black Excellence* (Washington, D.C., Georgetown University Press), Ethics and Public Policy, Reprint 5.

accepted. An illustration of this resistance was the refusal of the townspeople of Holly Springs, Mississippi, to allow the missionary who established Rust College, a traditionally black institution, to be interred in the "white" cemetery of that town.[14] Despite this and often stronger resistance, the notion caught on. Much credit is due the American Missionary Association which within ten years of the Civil War established more than a thousand schools with more than two thousand teachers for blacks in the South.[15]

The struggle for acceptance of public elementary school education for black children in the New England states began in the early 1800's, and the first black public high school was established in 1870 in Washington, D.C.[16] With considerably less public assistance, often using textbooks and equipment that had been discarded by the white school systems, several black secondary schools became exceptional academic institutions. Notable examples are Dunbar High School in Washington, D.C.; McDonough 35 High School in New Orleans, Louisiana; Frederick Douglas High School in Baltimore, Maryland; and Booker T. Washington High School in Atlanta, Georgia. Among them, these schools produced Thurgood Marshall, Charles R. Drew, Wilson Riles, and Martin Luther King, Jr.[17]

Public black higher education was spurred by the passage of the Second Morrill Act in 1890[18] which provided that in order for a state educational system to receive certain federal funding for its publicly supported agricultural and mechanical colleges it must not discriminate against blacks. In response to this provision southern and border state systems established black "A & M" colleges.[19] In the 1980-81 school year approximately 100 colleges and universities which were originally established for the education of black students, enrolled 185,636 black students.[20] The birth and continued viability of black education through periods of extreme racial hostility is a testimony to the endurance and ability of black people.

III. *Education and Social Issues*

In America the educational system has become the most widely used method of socialization. As a result, societal attitudes have had profound effects on educa-

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[14]Dena Kleinman, *The New York Times Magazine*, "Can Black Colleges Survive," December 20, 1981.

[15]Sowell, *Ethnic America, supra.*

[16]*Id.*

[17]Sowell, *Patterns of Black Excellence, supra*, p. 28.

[18]7 U.S.C., Section 323, 1976.

[19]U.S. Commission on Civil Rights, *The Black/White Colleges: Dismantling the Dual System of Higher Education.* Clearinghouse Publication 66, Washington, D.C., 1981.

[20]U.S. Department of Education, National Center for Education Statistics, "Bulletin." Washington, D.C., September 1981.

tion and educational policy. This is particularly true for minority education, where the goal has not only been socialization but also assimilation of the majority race. As a result of changing views toward racial integration, *Brown* v. *Board of Education*[21] was decided by the Supreme Court in 1954. And as the responsibility to educate language minority children was recognized, the case of *Lau v. Nichols, supra,* was brought to the courts. Both *Lau* and *Brown* had as their goal improving the quality of education which minority youth in American society receive. However, much of the attention and energy that was initially reserved for that goal has been diverted to other issues. By fighting too hard for or against a chosen method of achieving educational equality, many have forgotten the end which they first sought to achieve. Unfortunately, 28 years after *Brown* and 8 years after *Lau,* the quality of education which minorities receive is poor.

Integration — Brown, Bakke, and Adams. Brown v. *Board of Education* — The *Brown* decision is one of the most significant cases decided by the Court during this century. The case, a consolidation of four cases, was brought on behalf of black public school children in Topeka, Kansas; Clarendon County, South Carolina; Prince Edward County, Virginia; and New Castle County, Delaware. The suit was a Constitutional attack on the long standing public policy of many areas of this country, providing for racially segregated educational institutions. Prior to *Brown,* this practice had been legally accepted since 1896, when the Supreme Court in *Plessy v. Ferguson*[22] determined that "separate but equal accommodations" was not violative of the rights guaranteed blacks by the United States Constitution.[23]

The primary argument offered by the plaintiffs in *Brown* was that maintaining a dual system of education denied black children their rights granted by the Fourteenth Amendment to equal educational opportunities.[24] Plaintiffs further asserted that separate but equal facilities were not equal and could not be made equal.[25] In deciding the case in favor of the plaintiffs the court discussed improvement of the quality of education received by black children as a goal of the decision. The implementation of the *Brown* decision has been a difficult battle. Too often in the fight little attention has been paid to educational quality. A further threat to the integrity of the *Brown* decision occurs as the implementation of the decision becomes synonymous with the concept of busing and integration based solely on the proportional representation of minorities.

[21] 347 U.S. 483 (1954).

[22] 163 U.S. 537 (1896).

[23] *Id.* at 551.

[24] 347 U.S. at 488.

[25] *Id.*

For years, in such cases as *Goss v. Board of Education,*[26] *Bradley v. Richmond School Board,*[27] *Swann v. Charlotte-Mecklenburg Board of Education,*[28] parties battled over *Brown* and busing as the method of implementing integration. There was not a change in the permissive trend of desegregation cases until twenty years after *Brown* when the Court, in *Milliken v. Bradley,*[29] disallowed a Detroit desegregation plan using suburban pupils to desegregate inner city schools. Seven years later school desegregation questions are still with us. Recently the Senate voted to limit the power of the courts to order busing as a remedy for segregation.[30] Often forgotten is the fact that *Brown* was initially fought to insure certain citizens very basic rights to quality education.

Adams v. Richardson — Though *Brown* and its progeny represent a significant amount of the litigation in the area of educational desegregation of primary and secondary schools, important developments have taken place in higher education desegregation and "reverse discrimination" suits. The current case of *Adams v. Bell* was brought as a suit to enjoin then Secretary of old Department of Health, Education, and Welfare (HEW) Elliot Richardson from granting federal funds to states which operated dual systems of education at the post-secondary level. In the suit which was initiated in 1973 as *Adams v. Richardson,* 356 F.Supp. 92 (D.C. D.C. 1973), the Court set up a timeframe under which the Office for Civil Rights at HEW was to negotiate desegregation plans with eight states. Two states, Louisiana and Mississippi, were referred to the Justice Department for enforcement. The case has since been expanded to include 18 state systems. The Court's order in this case makes clear that desegregation is not to take place at the sole expense of historically black institutions. The question of how to integrate an entire school system when students are free to choose which institutions they will attend has been treated much too cavalierly. Moreover, it is clear that efforts to provide minorities' access to predominantly white institutions is infinitely less difficult than integrating predominantly black institutions. Tragically, the deteriorating education provided minorities at the postsecondary level is often ignored.

Bakke v. University of California — During the summer of 1978, the Supreme Court rendered its decision in *Bakke v. University of California.*[31] In his suit against the University of California at Davis, Allan Bakke challenged an admission procedure of that institution's medical school, under which the school

[26] 373 U.S. 683 (1963).

[27] 382 U.S. 103 (1965) (per curiam).

[28] 402 U.S. 1 (1971).

[29] 418 U.S. 717 (1974).

[30] *The Washington Post,* "Antibusing Bill Passed by Senate," March 3, 1982.

[31] 438 U.S. 265 (1978).

automatically set aside 16 of its 100 first-year seats for minority students. Allan Bakke, an engineer by profession, had been rejected for admission to the medical school at Davis twice.[12] The length, complexity, and number of opinions issued in the *Bakke* case make it difficult to conclude the exact meaning of the decision. One interpretation of the 154 pages of opinions and particularly from Justice Powell's opinion was that the Court was trying to reach a compromise position, one that recognized the past inequalities of minority education without punishing present-day majority students. To the extent that the Supreme Court said "yes" to the use of race and ethnicity as a criteria in the selection process but "no" to a predetermined set-aside for minority students, the Court successfully achieved that compromise.[13] Perhaps more important than the Court's decision were the speculations as to what the decision would do to affirmative action programs. Speculations ranged from a feeling that the decision would have a chilling effect on affirmative action programs to feelings that the decision would have no effect.[14] Because there are few reliable sources for numbers of admission for minority students, it is hard to determine which of these speculations about the *Bakke* decision have proven more accurate. If one simply looks at enrollment numbers for graduate and professional schools, the effect of *Bakke* appears to be minor. Though black enrollment has shown decline in recent years, the decline began prior to 1978.

Conclusions: Elementary and Secondary — Even though the integration of elementary and secondary public schools has received the bulk of attention, this has proven to be a slow task, with mixed results. According to statistics prepared for the Office for Civil Rights at the Department of Education, in 1968 nationwide, 61.80 percent of the minority children in public elementary and secondary schools were in schools with a minority population of 70 percent or greater. By 1978, 42.59 percent of the minority students were in schools with a minority population 70 percent or greater. For black students specifically, those figures have fallen from 70.85 percent in 1968 to 46.36 percent. A look at black integration by region provides a more informative view of where public school desegregation is going. These figures indicate that while attempts to integrate our public schools have proven successful, integration overall has not taken place. Further investigation shows that the proportion of schools that are 60 percent or greater minority population increased from 10.78 percent in 1970 to 12.84 percent in 1978 nationally and from 7.84 percent in 1970 to 13.77 percent in 1978 in the northeast. Some areas of the country are regressing, and pockets of predominatly minority schools continue to be unaffected by the desegregation process.

[12]Harvie Wilkinson, *From Brown to Bakke* (Oxford: Oxford University Press, 1979), p. 254.

[13]*Id.* at 298-301.

[14]See The Rockefeller Foundation, *Bakke, Brown, and Affirmative Action* (The Rockefeller Foundation, 1979).

Higher Education — The *Adams* order is in its ninth year, and most state plans are scheduled to be accepted before the end of 1982. The process does not end there. States and schools will be monitored by the Office for Civil Rights to determine whether the plans are working. Theoretically, if the plans "are working" they will bring about the full integration of the traditionally black as well as the traditionally white institutions. There is considerable basis for doubting that this goal will be achieved.

Whether the reasons for current conditions are "white flight" from the inner cities, increased white enrollment in private schools or covert, sophisticated attempts by school officials to separate students along racial lines, resegregation of public schools, particularly in the Northeast, is taking place. The desegregation cases of the 1980's will differ significantly from the early desegregation cases. The changes in demographics and social climate and failure of attempts to desegregate based solely on proportional representation demand that we rethink notions of desegregation and refocus on the original goal of educational quality. Perhaps we will find that directing our energies toward providing quality education for minorities better promotes the goal of educational equality.

Bilingual/Bicultural Education — Lau. *Lau v. Nichols* was decided by the Supreme Court in 1974. The plaintiff's case, brought on behalf of approximately 1,800 non-English speaking Chinese students in the San Francisco school system, was based on the Civil Rights Act of 1964 and the implementing regulations drafted by HEW. Applying the standards established by the regulations and accepting the lower court's factual finding that 1,800 non-English speaking Chinese children were being taught in English, the Court held that such actions violated the agency's regulations which specify that recipients of federal financial assistance may not:

> "(ii)Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;
>
> "(iv)Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefits under the program".[35]

According to the Court, prohibited racial discrimination included "discrimination . . . in the availability or use of any academic . . . or other facility." Because the school system failed to provide instruction in a language understood by the plaintiffs or to provide the plaintiffs with English instruction, the school system had effectively made an "academic facility" unavailable to the plaintiffs.[36]

In response to *Lau,* school districts throughout the country began to address the educational needs of language minority students. In 1974 Congress amended

[35] 414 U.S. 563 at 567.

[36] *Id.* at 568.

the Bilingual Education Act of 1974[17] on which the *Lau* Court relied. The 1974 provision was more explicit, defining what it meant by bilingual education and expanding funding coverage to other than low income children. Under the 1974 legislation, Congress authorized the appropriation of $40.25 million over the succeeding five-year period for training grants for local school districts and higher education institutions. Over the first five years of the bilingual program enactment Congress actually appropriated approximately $7.52 million.

On August 5, 1980, rules to implement the provisions of the Bilingual Education Act were proposed by the Education Department. Over the 75-day comment period, six public hearings were held throughout the country and over 4,600 comments were received from the public. The Department estimated that the regulations would cost up to $1 billion to implement and would cost between a $71.6 and a $156.8 million annually to maintain. Congress passed a resolution prohibiting the implementation of these rules prior to June 1, 1981. On February 2, 1981, Secretary of Education Bell withdrew the proposed bilingual education rules. The Department has since been developing new bilingual education policies.

Conclusions: Along with the problems of implementing a national policy on bilingual education have come questions about the effectiveness of such programs in enhancing the quality of education for language minority students. As with desegregation, this issue raises some complex questions about the purpose of programs. Bilingual/bicultural program questions may even be more complicated and difficult because bilingual education attempts to address the problems of numerous language minority groups, many with differing cultural experiences and greatly differing educational needs.

As we look at the current status of bilingual education, we realize that not enough has been done in the past 8 years. It is too early to draw conclusions about the future of bilingual education, but it is certain that we must begin to develop bilingual programs which reflect critical impartial evaluations of the efficacy of that work which has been done in the past.

Title I. Title I of the Elementary and Secondary Education Act[18] was passed in 1965. Its purpose is to provide funding for programs which are designed to improve the academic skills of educationally disadvantaged youth. Its 5.2 million constituents are typically limited English-speaking students, children of migrant families, the handicapped, ethnic minorities, and the poor. In Title I programs, 34 percent of the compensatory education students are black and 10 percent are Spanish surnamed.

Early evaluations (1965-1974) of the effectiveness of Title I programs in improving basic skills in reading and mathematics were discouraging. Since

[17] P.L. 93-380.

[18] P.L. 95-561.

1975, however, Title I program evaluations have reported performance gains among its graduates. A study by the Stanford Research Institute analyzing 283 state level reports on Title I for the 1969-1974 school years concluded that the average monthly gains of Title I students were 1.1 months gain for each month in Title I. Conclusions from other studies are consistent with the finding that Title I programs have a positive impact on reading and mathematic skills of disadvantaged students.[39] One major criticism of Title I is that, as set up, it offers schools a disincentive for raising the achievement level of its students. In order for a school to qualify for Title I funding, it must show that its educationally disadvantaged children need a remedial program. When the skills of the children in the program reach parity, theoretically, there is no longer a need for the program and funding is to be discontinued. The threat of discontinuance of funds acts as an incentive to keep children functioning at a level at which they will qualify for a Title I program.

The last reauthorization of Title I in 1978 (P.L. 95-561) extended the program until 1983. In 1980, 86 percent of all Title I dollars were used by school districts to provide specially designed supplementary programs for educationally deprived children in poor schools; 12 percent went to children of migratory farmers or fishermen, to handicapped children in state agencies, and to neglected or delinquent children; 1.5 percent was set aside to reimburse states for administering Title I; and .5 percent went to improving Title I program assessments.[40] The funding for Title I programs this school year (1981-82) is $3.112 billion. By the 1983-84 school year, the administration proposes to reduce the program to a $1.942 billion budget.

Conclusions: Minority education and education for other disadvantaged children has not progressed to the stage where the objective of the Title I program can be abandoned. Given the drastic reduction in money available for Title I programs, the challenge of the 1980's for local officials and educators will be to develop effective, low-cost remedial programs. The challenge for the federal government will be to remove the built-in disincentive for improving the skills of disadvantaged children.

IV. *A Brief Survey of Minority Education*

Hispanic Americans — Elementary and Secondary Education — In 1981 there were approximately 3 million Hispanic children enrolled in elementary and secondary school. Hispanic children make up close to 7 percent of the total public school enrollment. Hispanic youth age 14-19 were twice as likely as whites not to have completed high school, with non-completion rates considerably

[39]U.S. Department of Education, National Advisory Council on the Education of Disadvantaged Children, *Title I, Today: A Factbook* (Washington, D.C.: Government Printing Office, 1981).

[40]*Id.* at 12.

higher for Puerto Ricans and Mexican Americans than for other Hispanos. Of the entire Hispanic population, 40.8 percent have completed high school. At every age level a smaller percentage of Hispanos than whites attended school. Hispanic students were more likely to be enrolled in vocational programs and much less likely to be enrolled in traditionally academic programs. Hispanos generally received lower grades than whites. Finally, the National Assessment for Education Progress found that at age levels 9, 13, and 17, Hispanic students are behind the national norms.[41]

Postsecondary Education — The 1970's showed an increase in minority enrollment in postsecondary education. Hispanos are among the groups whose participation continues to increase, because Hispanic enrollment in higher education has increased dramatically over the period between 1976 and 1978. Unfortunately, attrition was a major problem among Hispanic college students. The National Longitudinal Study showed that of the Hispanic students who enrolled in college in 1972 about 50 percent dropped out within 4 years and only 13 percent actually graduated within the 4-year period.

There is a vast disparity between the percentages of Hispanos who enter college and those who actually matriculate. Of the Hispanic students who entered college in 1972, 40 percent of the Chicanos and 42 percent of the Puerto Ricans eventually received their bachelors degrees as compared to 56 percent of their white counterparts.[42] In a recent report issued by the Commission on Higher Education of Minorities, attrition at the high school and undergraduate levels was said to be the "most important factor(s) contributing to severe underrepresentation of Chicanos (and) Puerto Ricans" in higher education.[43]

Black Americans — Elementary and Secondary Education — Perhaps nothing better evidences the quality of education that black elementary and secondary school children are receiving than the results of the American College Testing (ACT) assessments. For each of the past 5 years, approximately 78 percent of black students have scored between 1 and 15 out of a possible 36 on their composite score of English, mathematics, social studies, and natural science tests. The mean composite score for blacks during this period was approximately 12.5.[44] Some would use these scores to promote ideas of racial inferiority, while

[41]U.S. Department of Health, Education and Welfare, National Center for Education Statistics, *The Condition of Education for Hispanic Americans* (Washington, D.C.: Government Printing Office, 1980).

[42]*Id.*

[43]Higher Education Research Institute, Inc., *Final Report of the Commission on the Higher Education of Minorities* (San Francisco, California: Josey-Bass, Inc., 1982), p. 17 (Hereinafter cited as *Higher Education of Minorities.)*

[44]The American College Testing Program, "Afro American"; Table 1.1 — Distributions of ACT Score Frequencies, Percentile Ranks, and Percentages for Men and Women Combined" (Iowa City, Iowa: ACT Education/Programs and Services, 1976-1980).

others would use them to show cultural bias in testing. Without getting into the merits of either position, we can attempt to explain these scores by looking at the quality of education black students receive. In fact, educational quality should be the focal point of our attention if we are serious about changing these performance scores.

Indeed, recent data raise questions about the type and quality of education black youth are receiving. According to Education Department statistics, blacks are overrepresented in special education programs and in traditionally nonacademic courses and underrepresented in science and mathematics courses. Additionally, blacks are disproportionately represented among students who are expelled or suspended.

Higher Education — Black Americans are experiencing considerable problems with access and retention. A recent Databank survey of the 1981 freshman class indicates that only 8.6 percent of the entering freshmen class are black. This is the abysmal result of the decline in enrollment of blacks that began in 1974-1976 school years. While other minority enrollment increased continually during the 1970's, black enrollment peaked and then began to decrease. Another potentially acute problem is the scarcity of blacks pursuing degrees which lead to some of the more lucrative professions. Among education experts there is also some concern about the overrepresentation of blacks in two-year institutions and community colleges. While some applaud the efforts of community colleges and two-year institutions in making education accessible to black and other minority students, others are concerned with the possibility that two-year institutions and community colleges provide students with credits which will not apply toward a degree in a fully accredited four-year institution. In addition, there is evidence that students completing two-year institutions do not go on to four-year institutions.[45]

Indian Education in the United States. The responsibility for Indian education rests with two separate federal agencies, the Education Department through its office of Indian Education and the Department of Interior through the Bureau of Indians Affairs (BIA). The BIA is responsible for the education of Indian youth from tribes recognized by the federal government. These tribes are mainly found west of the Applachian Mountains.[46] Many Eastern tribes are not constituents of the BIA, and their youth are not a part of the BIA education programs. Education of the children of Eastern Indians is monitored by the Education Department. While it is difficult to determine the quality of education Indian children are receiving in BIA and public schools, the failure of Indians to con-

[45] *See* Institute for the Study of Educational Policy, *Minorities in Two Year Colleges* (Washington, D.C.: Howard University Press, 1980), and *Higher Education of Minorities, op. cit.*

[46] U.S. Department of the Interior, Bureau of Indian Affairs, *Statistics Concerning Indian Education* (Washington, D.C.: Government Printing Office, 1981).

tinue on to college and graduate and professional school is evidence that more needs to be done if we are to achieve educational parity for Indian youth in the United States.

Conclusions — Increases in minority enrollment and retention levels at the elementary and secondary school levels and enrollment at the postsecondary level cannot be ignored. Neither should we attempt to negate their importance. Educational advances for minorities during the 1970's were significant. Yet, the overall picture of minority education is not a positive one. Figures on the number of minority enrollment needed to achieve parity are still discouraging. Equally dismal is the evidence of the quality of education being offered minority youth. There are those who retain some hope for enhancing the quality of education provided minorities. During a recent panel discussion on Black Education and the Inner City, Dr. Vincent Reed, former Superintendent of the Washington, D.C. school system and a former Assistant Secretary of the Department of Education, made clear his opinion that despite its problems, the public school system can be turned around. Dr. Reed stated, "I feel that we must go back to developing essential skills early in the pre-K through 12th grades and make sure that there are standards set, and make sure that those people responsible in education are held accountable for education. . . . It has been done. I see the swing in public education, . . . (toward) dealing with competency rather than social promotion."[47]

In order to do this, we must address certain issues honestly and effectively, keeping in mind the goal of educating our youth. The following is a discussion of some issues in minority education which we must be prepared to address if we hope to improve minority education.

V. *Issues in Minority Education in the 1980's*

The 1980's will present us with new and complex issues and old issues with new twists. The focus will continue to be on how to prepare minority youth to take a meaningful role in society. One of the most provocative changes in the 1980's will be the reduced role of the federal government in influencing local policy, particularly with the institution of block grants. Issues in desegregation and bilingual education will continue as crucial concerns in the 1980's though the claims of the parties, the role of the executive branch, and most likely the court results will change significantly. Because of the changes in this arena, there should be a greater emphasis on assurance of educational equality through quality education. The following represent some of the issues that will surface in the next decade and some of the factors that will influence how they will be addressed:

[47]Marva Collins, S.I. Hayakawa, Vincent E. Reed, and Walter E. Williams, *Black Education and the Inner City* (Washington, D.C.: The Lincoln Institute for Research and Education, 1981), pp. 29-31.

A. Will Minority Educational Concerns Receive Sufficient Financial Attention with the Federal Government Cutback in Funding and the "Institution of the Block Grant System?"

The Administration has proposed sending federal education funds to the states in the form of block grants in order to return control and responsibility to the local level. At the same time, the Administration is reducing the amount of funds going into education. Some members of the minority community are particularly concerned by these changes. The reduction in funds is of concern, because it will mean reduction in programs aimed at the poor and disadvantaged. Title I and the school lunch program are just two such programs. Additionally, many believe that such programs are more responsive when specific provision is made for how funds will be spent. Because minorities are overrepresented in the poor communities and poor inner-city schools, these reductions will impact on them disproportionately. Many minority members can recall when the local communities spent as much as five times more on educating its white youth as it did on black education.[48]

Prospects of returning to even a semblance of that system is understandably frightening. However, this should not be repeated in the 1980's. According to the Census Bureau,[49] in 1975 there were 3,194 local black officials, more than twice as many as in 1970. These officials and their colleagues should be accountable to the minority community. Their presence in local government should give minorities some hope that their concerns will at least be heard. Additionally, local entities will have to develop cost-effective methods of educating all of its students.

B. What Will Be the Role of Bilingual Education in the 1980's?

If bilingual education is to continue as a viable program in the 1980's, some attempts must be made to specify the needs for such programs. While there is no doubt that bilingual education benefits some students, it will no longer be enough to say that every language minority student must be provided with instruction in their first language. More attention will have to be paid to the culture, language, and in many cases family and socio-economic background of the individual student. This is particularly true for the diverse range of students who are Spanish speaking language minority. This type of specificity must be worked out at the local level with the students, with technical assistance and necessary enforcement of civil rights laws by the federal government.

[48] *See*, Commission on Civil Rights, *With All Deliberate Speed*, *supra*, p. 5.

[49] U.S. Department of Commerce, Bureau of the Census, *The Social and Economic Status of the Black Population in the United States: An Historical View, 1790-1978*. Current Population Reports, Special Studies Series, p. 23, No. 80 (Washington, D.C.: Government Printing Office, 1979), p. 146.

C. Will Attempts at Public School Integration Be Continued in the 1980's?

The integration of public schools will continue as a goal probably for as long as any evidence of segregation exists. Graduates of segregated school systems are very much attuned to what is happening in the school systems and are making sure that we do not return to racially segregated public schools. *Brown* and similar cases also insure against traditional segregation, but other forms of desegregation cases must be addressed. Cases brought attempting to integrate predominantly black colleges and cases brought to prevent resegregation of school districts represent two types of new desegregation cases. In the next decade, as attempts are made to desegregate black colleges, it must be decided what the standard of integration will be and whether integration *per se* should be a primary goal. Though black colleges never discriminated against whites in admissions, higher education desegregation may result in them bearing the brunt of desegregation efforts unless a policy which recognizes the mobility of students at the college level which clearly states the standard by which we will judge desegregation efforts is established and applied and which reaffirms the ultimate goal of quality education.

As pointed out earlier, desegregation of schools which are segregated because of the large, predominantly minority population of the school district and changes in housing patterns will come to the forefront in the 1980's. A device that the school system can employ to remedy the school segregation that results from change in demographics is the magnet or alternative school. An alternative or magnet school which offers attractive academic or technical courses could raise the academic level of the system for the minority students enrolled in the system and attract nonminority students into the system.

Additionally, perhaps most importantly, segregation within the school will surface as a problem. The overrepresentation of Hispanic, black, and Indian youth in special education classes and in discipline cases will have to be monitored. Also, we must look at the underrepresentation of minorities in the more traditionally academic courses. It makes little sense to struggle to desegregate school systems only to have minority youth segregated in the classroom.

D. How Will We Assure Educational Equity for Minority Youth in the 1980's?

The evidence of the need for quality education in our schools is overwhelming. Both the critics and the proponents of the public school system will admit that problems do exist. A number of studies which have attempted to locate school systems that are effectively educating minority students have been successful. Such studies have further attempted to identify the shared policies and techniques of these schools in the hope that other institutions may benefit from them. Two such studies were conducted by the National Urban Coalition and by

the Center for Law & Education.[10] In his book, *A Possible Reality*,[11] Dr. Kenneth Clark presents a program for establishing an effective school system in Washington, D.C. By example, Marva Collins and her school in Chicago have shown that excellence is possible through dedication and high standards. Finally, the success of parochial schools in educating minority students cannot be ignored in deciding educational policy for the 1980's. In most of the instances of improved educational quality, high expectations of discipline and academic achievement were prevailing factors; high per pupil expenditures were not. As reduced availability of funding will be an important factor in the 1980's, this fact will be relevant to program and policy development.

VI. *Conclusion*

Improving the condition of minority education must involve some strengthening and, in some cases, changing of ideals on everyone's part. Social issues that effect education do exist and will continue to exist, but we can no longer afford to spend time and resources addressing those issues at the expense of learning. We must begin to measure the importance of those issues against their effect on educational achievement. Though social goals are important and should be reflected in our schools, society must realize that the central objective of the educational system is learning. To promote this, objective achievement must be monitored, and we must continue to look for schools in which academic success in minority and disadvantaged children is being achieved. Those programs must be fostered and their techniques studied and promoted on a national scale. A redoubling of effort is necessary to monitor the problems in discipline and disproportionate representation in special education classes in order to protect the civil rights of students and to make sure those students are receiving the best education possible.

Local officials and communities must depoliticize elementary and secondary education systems and begin to make decisions based on benefits to the students. They must insist on high standards of performance from their teachers and other members of the educational system. They must also adopt curricula which emphasize achievement of basic skills and which teach the skills individuals need to participate in a complex society. The highly technological society we live in demands that our young people achieve at a certain level. Educators must also demand that students achieve at least at this level and must not view minority education as superfluous to our society's development and allow minority youth to be among the growing numbers of the unemployed, or worse yet, the prison

[10] National Urban Coalition, unpublished report completed under contract with the National Institute of Education, Washington, D.C.: 1981, and Beverly Caffee Glenn, *What Works: An Examination of Effective Schools For Poor Black Children*, Unpublished Paper completed for The Center for Law and Education, Cambridge, Massachusetts, 1981.

[11] Kenneth B. Clark, *A Possible Reality*, (New York: The MARC Corporation, 1972).

population. Educators must prepare these students to have a productive role in scientific, technological, and human development in the coming decade. In order to do this, they must assume that all of their students can achieve and provide instruction based on that assumption.

As cliche and overused as the phrase may be, it is still true that learning begins in the home. The values that parents instill in their children at early ages will be with them throughout their lives. They must make sure that the will to learn and achieve are among those values. Students, especially minority students, must make sure that at least for the first 18 years of their lives learning is a top priority.

If only a portion of these things are done, minority education will be enhanced. Many individuals throughout the country have shown that minority students can achieve academic excellence. We must continue to demand that academic excellence for minority students be accomplished on a national scale, and we must work to see that it is.

Minorities, Youth, and Education: Comment*

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I. *Review and Commentary*

The quality of public schooling, especially at the primary and secondary levels, appears to have declined in recent years. This is evidenced by dramatic declines in standardized test scores, which have occurred even while the number of professional staff and real expenditures per pupil have increased and enrollments have decreased. Taken together, these attributes depict a rather sad scenario.

Clarence Thomas addresses these same issues, emphasizing the differential patterns exhibited by minorities, particularly blacks and Hispanos. Besides discussing current trends, Thomas offers interesting historical perspectives and also addresses college as well as pre-college educational experience. School quality for blacks as a group was and is low relative to that for whites as a group. However, school quality for the two groups, at least until recently, has been moving closer to equality. Investigators such as Finis Welch have documented that the number of days attended by students, class sizes, teacher salaries, and expenditures per pupil have all converged for blacks and whites. These patterns explain part of the reduction in earnings differentials between blacks and whites as new cohorts of workers enter the labor market.

Nonetheless, with the recent general decline in school quality indicators, it is easy to be pessimistic about the continued relative improvement of blacks as well as other minorities. As Thomas points out, current cohorts of black and Hispanic youth do exhibit lower standardized test scores relative to white youth. However, no evidence of whether the scores have begun to diverge is presented.

Casually, there is little question that the worst primary and secondary schools are located within inner-city areas of large metropolitan communities, where blacks and Hispanos tend to be concentrated. A vicious cycle begins at this point. The provision of low quality educational services has the effect of lowering attained schooling levels for minority youth. This is not surprising. After all, if

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the opportunity cost of a standardized unit of education rises, we are taught to expect that the quantity demanded will decline, other things being equal. If minorities are expected to endure lengthier schooling periods than whites to obtain a unit of education, many choose not to bother. Indeed, minorities generally do not attend school for as many years as whites. The lower quantity and quality of minority schooling levels can then be expected to result in lower earnings levels for their entire working lives, irrespective of the presence of labor market discrimination. In fact, Thomas Sowell, in his book *Markets and Minorities*, presents evidence that while the market rate of return to added years of schooling is lower for blacks and Hispanos than for whites, the market rate of return to a standardized unit of education (measured by test scores) is virtually identical across these ethnic groups. Thus, it would appear that school quality is at least as important as any other explanation of racial earnings differentials.

Thomas stresses attempts by public policymakers to address school quality issues. Prior to 1954, legal segregation was permitted under the law so long as minority institutions (specifically for blacks) were judged to have "equal accommodations." As a result of a decision in the case of *Brown v. Board of Education*, this practice is no longer permitted. During the period 1954-74, public policies of forced integration have been practiced. Legal authorities have forced student exchanges between inner-city and suburban schools rather than directly addressing the school quality issue. Racism aside, most parents who currently have a child in a school of reasonable quality would not desire a transfer to a school of lower quality *or* other pupils to be admitted in that have not previously been exposed to the same quality educational standards. Since 1974, forced integration as a public policy appears to be in limbo. Thomas suggests, and I agree, that we redress the interpretation of *Brown v. Board of Education* as an issue of dropping legal barriers on enrollment and providing quality education to all individuals, irrespective of race.

Thomas raises another issue concerning the provision of bilingual education, particularly among Hispanic youth. As a result of *Lau v. Nichols* (1974), it is the right of a child to be instructed in the language he understands. This has generally been interpreted as the right to bilingual education until English language skills are developed. However, the precise legal requirements have yet to be worked out. A research study in progress by Finis Welch provides interesting information relating to the importance of language in the attainment of quality education and appropriate earnings levels. Utilizing the Survey of Income and Education (which has an overrepresentation of Hispanos), he computes earnings differentials between white and Hispanic males, holding the usual measured characteristics constant. Whites are found to earn more than Hispanos, and native-born individuals are found to earn more than foreign-born individuals. However, among native-born Hispanic males where English is the primary language spoken in the household (which represents 27 percent of Hispanic sample observations), there is no earnings differential between whites and Hispanos, holding other measured attributes constant. Furthermore, the differentials between whites and Hispanos

as well as between native-born and foreign-born individuals actually disappear once the degree of English language disability is properly accounted for. Indeed, among Hispanic individuals, English language capability appears to be an extremely important determinant of earnings. Thus, appropriate attention to language issues should form part of any public policy considerations in the provision of quality schooling to minorities.

Thomas concludes his paper by asserting that desegregation and bilingual education matters will continue to be important policy issues during the 1980's. Thomas also tries to make an encouraging case for block grants to the states or municipalities for education. His enthusiasm results from an observation of increased minority leadership in urban areas as well as from the view that municipalities may institute more cost-effective methods in the spending of funds. However, the fact is that the federal contribution to public schooling is only 8 percent of the total and is scheduled to go down. State and municipal leaders have not exhibited an ability to deal effectively with the problem within the current educational framework. As real expenditures per pupil and the federal share of educational funding have risen during the 1970's, absolutely no progress is evident within inner-city schools. Thus, there is no evidence that additional expenditures will alleviate the problem appreciably.

II. *What About a Voucher System?*

Since 1974, in the face of a declining school-age population, enrollments in private schools have been steadily rising. Ten percent of school age children now attend private schools. For inner-city families constrained by low incomes, it is extremely difficult to pay between $2000 and $5000 per year for quality private schooling. Furthermore, it is even more difficult to afford residence in a school district that has higher quality schooling.

Why not distribute yearly vouchers worth up to $2000 (in 1978 dollars) to all individuals of school age? This was the average amount spent by taxpayers on public schooling in 1978. Academically approved schools can submit vouchers to the state in order to obtain the promised stipend. Furthermore, vouchers would be redeemable only from schools that do not discriminate.

The advantage of this system is an ability for parents to "shop around." Competition among schools, whether private or public, would help the consumers of its product. Schools that attempt to provide an inferior product, in relative terms, will fail. Only the most efficient producers of educational services would prevail. Low-income families can only gain from such a system when compared with the options now available to them. The provision of pre-college education represents a $100 billion industry. Schools would compete for these funds by not only offering a quality product but by offering a variety of programmatic needs and desires as judged by parents. In particular, in areas where there is sufficient need and desire for bilingual services, schools would be willing to provide them.

Much of the opposition to a voucher system centers on whether "add-ons" would be allowable. Some parents, irrespective of family income level, will desire educational services for their children that exceed those that can be purchased with only the voucher. The fear is that the range in quality of services would be wider than currently exists. Strictly speaking, while school quality is expected to increase dramatically among low-income households, it is *possible* that it will increase to an even greater degree among high-income households. However, this does not logically follow. It would depend fundamentally on the production process of providing quality education and the relative importance that families, both rich and poor, place on the acquisition of quality services. The important feature of the system is that low-income families residing in the inner-city stand to gain significantly from the system. Besides, if a parent, rich or poor, desires greater quality education beyond what a voucher provides, should they be prevented from obtaining additional services?

III. *What About a Youth Subminimum Wage?*

In a public school system that provides low quality education to minorities, can such individuals at least quit school and obtain labor market skills with experience in a job? The answer is often a negative one. In a recent study by Martin Feldstein and David Ellwood, some very interesting statistics are presented comparing white and nonwhite male teenagers in October of 1976. The unemployment rate for white teens was 16.3 percent of the labor force; for nonwhite teens, it was 40.6 percent. The percentage of out-of-school white teens that were not employed was 25.9 percent; for out-of-school nonwhite teens, it was 57.1 percent. The school quality and associated attainment levels exacerbate the labor market problems faced by nonwhite youth relative to white youth. High unemployment and nonemployment rates among youth are partially the result of a uniformly mandated minimum wage which covers most industries. Studies have shown that teenage employment falls with the imposition of a higher minimum wage. Employers pick among those teens that have acquired the most skills at that time. This sorting process will tend to favor white teens if the value of schooling received was of higher quality than nonwhite counterparts. A relaxation of the minimum wage to teens should help all teens (in terms of employment availability), but particularly nonwhite teens.

Furthermore, more opportunities for part-time employment should become available, allowing students to "add on" to their voucher amount if such a system were ever implemented. In October 1976, 35.7 percent of teens in school were employed. That percentage would surely rise with a youth subminimum. The combination of offering enhanced school quality and enhanced employment opportunities (especially part-time) would dramatically assist minority youth in their efforts to prepare themselves adequately for market opportunities.

Minorities, Youth, and Education: Comment

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The role of a discussant is to strike a very delicate balance between sufficient applause for the main paper to justify its having been chosen for presentation and sufficient criticism of it to justify his own appearance. If the balance tips too far the first way, I would be suggesting the paper says it all so there is no reason for me even to be here; if I am overly critical, I implicitly question the judgment of our sponsors, and it is good policy not to bite the hand which feeds us.

There is, fortunately, a way to avoid this tricky problem by employing a technique with a long and honorable academic history: it is known as "commenting on the paper I would have given if I had been asked." Seriously, among the very best papers we read are those which set us to thinking; they are spurs for further reflection, and I have often scribbled as much by way of commentary in the margins of such papers as had been written originally. Clearly, by this criterion, Thomas's contribution to this symposium was an excellent piece.

I was particularly intrigued by his analysis of the *Lau* decision. The court in effect said that the failure to provide instruction in a student's native language violated the laws and regulations mandating equal access to federally funded educational facilities. But consider the implications of this reasoning. If we grant its validity, it seems to me only consistent to suggest, by the same logic, that universities must admit and provide education for the illiterate, that secondary schools must pass to the next grade all students enrolled regardless of performance, or that medical schools must develop alternate training programs for Christian Scientists. I don't mean to trivialize the issue by these examples: it is a serious matter, but I think it has been totally miscast. The problem, really, is one of equality versus standards, where equality has become emotively linked to democracy and standards to elitism. This is wholly false. Worse, it diverts our attention from the problem we should be addressing.

The most fundamental principle which can be drawn from the (thankfully) increasing body of literature from such acutely perceptive analysts as Sowell, Williams, and others is that discrimination against any sizable group is economically foolish, costly, indefensible, and self-defeating unless it is artificially promoted by political interventions into otherwise free markets. It follows ineluctably from this that the most efficient as well as effective public policy against discrimination does not involve new and further political interventions. On the contrary, the correct public policy must consist of aggressive government

withdrawals from every market in which discrimination is a problem. In short, the solution is more rather than less choice.

As a matter of fact, if quality education is to be the goal, and I heartily endorse such a goal, the issue of parental choice becomes all the more critical because the quality of any product is a function of marketplace demands. You simply cannot mandate quality in anything, not in a free society; but you can encourage it by removing barriers from people who might be inclined to choose quality and by halting the drain on the resources they may have to pay for quality. I have deliberately chosen this way of expressing the idea because I think it is important we discontinue immediately using any language which implies that government can or should be *giving* people more freedom of choice or *giving* people resources to do something. While in some ways the effect might be thought the same, it is a wholly wrong and even dangerous way to frame the policy. Our task is not to give people more choices, it is to stop taking their choices away from them; just as it is not our task to give people more resources but, rather, to stop taking the resources they have.

If we followed this sort of policy, we would not need to worry overmuch about the effect of federal or other cutbacks in funds. A healthy, vigorous, and dispersed economy would enable all citizens, including minorities, to purchase the education of their choice. Quality education would most certainly be available, as it is now on a smaller scale, because there would be an economic incentive to provide it to all who were willing and able to pay. This is amply demonstrated in the example of Marva Collins in Chicago and in the generally expanding number of competing private institutions at all levels.

It has become almost a rote necessity to declare that one rejects discrimination in all its forms. I do not. I reject racism, sexism, ageism, and the like for most purposes, but I do not condemn discrimination. Free choice demands a discriminating intellect, which is fostered in turn by a program of quality education. It is not, after all, the noting of differences which constitutes the sort of discrimination considered socially unacceptable — we all do that virtually every minute of every day: it is, rather, the elevation of differences which are irrelevant to a level of importance unjustified by rational thought. Education, both at home and in the school, is the only means we have to develop the critical acumen which rejects irrelevancies on the basis of thoughtful consideration.

Public debate would become far more useful and meaningful if, as Mr. Thomas has said, we focused our attention on the twin concerns of encouraging quality education and removing the economic, political, and regulatory roadblocks from citizens who desire access to quality education. It is abundantly clear, however, that there are many who benefit from an obfuscated, misdirected public debate on these matters. For example, scattered among many fine, dedicated, and capable teachers at all institutional levels are some who, while paying lip service to quality, resist strenuously any public or parental attempts to make teachers responsible for effective teaching. Unfortunately, those who resist

are usually well-organized in teachers' unions, all of which uniformly have condemned the testing of teachers, objective testing of students, merit pay for teachers, dismissal for incompetence, and other similar efforts. On the other hand, truly effective teachers are usually not union organized (or at least seldom are they union activists) because they are too busy doing the things that lead to quality education. Many school boards, admittedly faced with what seem to be irresistible pressures, nevertheless have permitted themselves to be overcome by outside groups who want to use the school system for their own purposes. To this extent, school boards have become part of the problem, because their traumas are now institutionalized and their subservience internalized. And I need only mention in passing the untold thousands of program administrators, evaluators, consultants, regulators, and service providers, both in and out of government, whose very livelihood would be endangered by any aggressive movement toward decentralization, privatization, competition, or parental involvement and choice.

These are the forces we must overcome. I greatly fear that until this fact is realized there will be little real headway made in achieving our goal of educating, in the most professional sense of that term, all who wish it to the limits of their individual capabilities.

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